



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-525**

**Appeal P-9200634**

**Ministry of the Attorney General**



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# ORDER

## BACKGROUND:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all documents contained in a specified file number in the Office of the Police Complaints Commissioner concerning the requester's complaint against the Ottawa Police Force. The Ministry located a number of records responsive to the request and provided partial access to the records, relying on the exemptions in sections 14(1)(a), 14(1)(b), 14(2)(a) and 49(a) of the Act. The requester appealed the denial of access.

In the course of mediation, the Ministry reconsidered its decision and agreed to release all of the remaining records to the requester, subject to the severance of personal information of other individuals from three of the records, pursuant to section 21(1) of the Act. Since the records at issue contained information relating to both the appellant and other individuals, the Appeals Officer determined that section 49(b) of the Act should be considered. The appellant continued his appeal with respect to the severed information.

As further mediation was not possible, notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry and to the appellant. Representations were received from both parties.

While the representations were being considered, Commissioner Tom Wright issued Order M-170, adopting the Ontario Court (General Division) (Divisional Court) June 30, 1993 decision in the case of John Doe et al. v. Information and Privacy Commissioner et al. (unreported). This decision interpreted several provisions of the Act in a way which differed from the interpretation developed in orders of the Commissioner. Since similar statutory provisions were also at issue in the present appeal, it was determined that copies of Order M-170 should be provided to the parties. The appellant and the Ministry were provided with the opportunity to change or to supplement the representations previously submitted. Additional representations were received from the appellant. I have considered these representations together with those previously received.

## RECORDS AT ISSUE:

One of the records at issue is page 74 which is a letter dated February 12, 1991 from the Director of Investigations with the Office of the Police Complaints Commissioner to the Chief of the Ottawa Police Force. This letter acknowledges the receipt of a number of complaints from named individuals and requests that further information be forwarded for each complaint. The appellant is one of the named individuals. The letter was disclosed with the names of the other individuals deleted.

It is clear from the appellant's request and subsequent correspondence that he is seeking information pertaining to his own complaint, not general information about complaints against

the Ottawa Police Force nor the personal information of other individuals unrelated to his complaint. Having carefully reviewed page 74 and the Ministry's representations which establish that the other named individuals are entirely unrelated to the appellant's complaint, I am satisfied that the information severed from page 74 is not responsive to the appellant's request. Accordingly, I find that this information should not be disclosed.

The two remaining records, pages 156 and 157 are computer printouts of police checks on the appellant, with information relating to another individual deleted.

## **ISSUES:**

The issues in this appeal are:

- A. Whether the information severed from the records qualifies as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information severed from the records qualifies as "personal information", as defined in section 2(1) of the Act.**

In all cases where the request involves access to personal information, it is my responsibility to determine whether the information falls within the definition of "personal information" as set out in section 2(1) of the Act and whether it relates to the appellant, another individual or both.

Section 2(1) of the Act reads, in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- ...
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In my view, the information severed from the records at issue falls within one or more of the aforementioned paragraphs of the definition of personal information under section 2(1) of the Act. Pages 156 and 157 contain personal information of both the appellant and another individual (the affected person).

**ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies.**

In Issue A, I found that pages 156 and 157 contain the personal information of both the appellant and the affected person.

Section 47(1) of the Act gives individuals a general right of access to personal information in the custody or under the control of institutions. However, this right of access is not absolute. Section 49(b) provides an exception to this general right of disclosure of personal information to the person to whom the information relates. Specifically, section 49(b) provides that:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 49(b) introduces a balancing principle. The Ministry must look at the information and weigh the requester's right of access to his/her own personal information against another individual's right to the protection of his/her personal privacy. If the Ministry determines that the release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the Ministry the discretion to deny the requester access to the personal information (Order 37).

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an

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unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 49(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The Ministry, in its representations, relies upon the presumption contained section 21(3)(b) of the Act, which provides:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The Ministry advises that pages 156 and 157 were compiled as part of the Ottawa Police Force's investigation of the appellant's complaint against certain of its officers.

That complaint alleged violations of the Criminal Code of Canada and alleged behaviour which would constitute offences under the Police Services Act. Previous orders of this agency have determined that investigations of alleged violations of the Police Act (predecessor to the Police Services Act) qualify as investigations for the purposes of section 21(3)(b) (Orders P-285 and P-372). An investigation of alleged violations of the Criminal Code of Canada would also qualify as an investigation under this section. I am satisfied that the investigation of the appellant's complaint qualifies as an investigation into a possible violation of law.

Having carefully reviewed the records and the representations of the parties, I find that the personal information contained in the severed parts of the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law and accordingly, its disclosure would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b).

Section 21(4) of the Act lists the types of information the disclosure of which would not constitute an unjustified invasion of privacy. I have considered section 21(4) of the Act and find that none of the personal information at issue in this appeal falls within the ambit of this provision.

I am of the opinion that disclosure of the personal information severed from pages 156 and 157 would constitute an unjustified invasion of the personal privacy of the affected person. I find that the exemption under section 49(b) of the Act applies.

Section 49(b) is a discretionary exemption. The Ministry has provided representations regarding the exercise of its discretion to withhold only the personal information of the other individual from pages 156 and 157. I find nothing improper in the Ministry's exercise of its discretion.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ August 30, 1993