



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

ORDER P-571

Appeal P-9200813

Ministry of the Attorney Genera



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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 records held by the Public Complaints Commissioner concerning the investigation of a complaint filed by the requester. The Ministry located records responsive to the request but denied access to some of these documents based on the exemptions provided by sections 14(1) and (2), 21, 22 and 49(b) of the Act. The requester appealed the denial of access.

During mediation, the Ministry and the appellant agreed to narrow the focus of the appeal to a total of five pages of documents. The exemptions claimed by the Ministry for these five pages were sections 14(2)(a), 21 and 49(b) of the Act. Pursuant to section 28(1) of the Act, the Ministry notified a number of third parties whose interests might be affected by the disclosure of the requested records. One third party refused to consent to the release of the information. No responses were received from the other parties.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Representations were received from the Ministry only.

RECORDS AT ISSUE:

The record at issue in this appeal consists of four witness statements, which the Ministry has categorized as pages 38, 39, 40, 41 and 42.

ISSUES:

The issues which I will need to address in this appeal are:

- A. Whether the information contained in the record qualifies as "personal information" as defined by section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the personal information relates to both the appellant and other individuals, whether the discretionary exemption provided by section 49(b) of the Act applies to the personal information.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the record qualifies as "personal information" as defined by section 2(1) of the Act.

The Ministry submits that all the records at issue contain personal information.

Section 2(1) of the Act states, in part, as follows:

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

...

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another 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;

The witnesses' statements at issue were provided by various individuals and involve events surrounding a complaint filed by the appellant with the Police Complaints Commissioner. The complaint was filed against a member of the Metropolitan Toronto Police Force.

In my view, the information contained in the records constitutes personal information of the appellant and other identifiable individuals.

ISSUE B: If the answer to Issue A is yes, and the personal information relates to both the appellant and other individuals, whether the discretionary exemption provided by section 49(b) of the Act applies to the personal information.

Under Issue A, I found that the records contain the personal information of the appellant and other identifiable individuals. Section 47(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 49 provides a number of exemptions to this general right of access. One such exemption is found in section 49(b) of the Act, which reads:

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;

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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 institution the discretion to deny the requester access to the personal information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(3) lists types of information, whose disclosure is presumed to be an unjustified invasion of personal privacy.

In Order M-170, Commissioner Tom Wright adopted the approach set out in the Ontario Divisional Court decision of John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 respecting the application of the section 21(3) presumptions to personal information contained in a record. He described this approach as follows:

... [W]here personal information falls within one of the presumptions found in section 14(3) of the [municipal] Act [the equivalent to section 21(3) of the Act], a combination of the circumstances set out in section 14(2) of the Act which weigh in favour of disclosure, cannot collectively operate to rebut the presumption.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption.

I adopt this approach for the purposes of this order.

In its representations, the Ministry relies on section 21(3)(b) of the Act to support its position that the release of the information contained in these records would constitute an unjustified invasion of the personal privacy interests of other individuals. This provision states that:

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 submits that all the records were compiled during the course of a law enforcement investigation. In this case, the investigation was undertaken by a police officer with the Police Complaints Investigation Bureau, which forms part of the Metropolitan Toronto Police Force.

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The police officer obtained statements in an attempt to determine whether another officer had violated the Code of Conduct for police officers as set out in the Regulations made under the Police Services Act. The Ministry also points out that sanctions can be imposed on a police officer as a result of a Bureau investigation and the subsequent decision of the Chief of Police, pursuant to the Regulations promulgated under the Police Services Act or the Criminal Code.

Based on the representations provided to me, I am satisfied that the record was compiled as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) have been established. I have considered section 21(4) of the Act and find that none of the personal information contained in the five pages at issue falls within the ambit of this provision. The appellant has not argued that the public interest override set out in section 23 of the Act applies to the facts of this appeal.

I have considered all the circumstances arising in this appeal and find that the disclosure of the personal information withheld from the records at issue would constitute an unjustified invasion of the personal privacy of individuals other than the appellant, and is, therefore, properly exempt from disclosure.

I have reviewed the Ministry's exercise of discretion under section 49(b) in refusing to disclose the personal information contained in these pages. I find nothing improper in the manner in which this discretion was exercised in the circumstances of this case.

Because of the manner in which I have dealt with Issues A and B, it is not necessary for me to consider the application of the exemptions provided by sections 14(2)(a), 21 and 49(a) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ November 3, 1993