



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

# **ORDER P-622**

**Appeal P-9300313**

**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 information in prosecution files and Crown briefs related to three specific charges laid against the requester. Partial access was granted to the records requested. Access was denied to six pages of correspondence in their entirety and to portions of other documents pursuant to sections 19 and 21 of the Act. The requester appealed the decision to deny access.

As a result of mediation, only one three-page letter addressed to Crown counsel remains at issue. The Ministry claims that disclosure of this record constitutes an invasion of the personal privacy of another individual under section 21(1) of the Act. Notice that an inquiry was being conducted to review the decision of the Ministry was sent to the Ministry, the appellant and the affected party. Representations were received from all parties.

## ISSUES:

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

## SUBMISSIONS/CONCLUSIONS:

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

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

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

I have reviewed the record and find that it contains the personal information of the appellant, the affected person and other identifiable individuals.

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

In Issue A, I found that the record contains the personal information of the appellant, the affected person and other identifiable individuals. Section 47(1) of the Act gives individuals a general right of access to personal information about themselves in the custody or in 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;

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

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 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 personal privacy.

In his representations, the appellant states that section 21(1)(d) of the Act applies to this record. Section 21(1)(d) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

under an Act of Ontario or Canada that expressly authorizes the disclosure;

The appellant believes the record is one which was read aloud in court and which he asked to have entered into evidence; however, the judge refused to do so. The appellant submits that the Criminal Code expressly authorizes disclosure of the record. I am not satisfied that the Criminal Code authorizes disclosure of the record and, in my view, section 21(1)(d) is not applicable.

**[IPC Order P-622/February 3, 1994]**

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 an individual's personal privacy. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In my view, none of the presumptions are relevant in the circumstances of this appeal. I have also 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.

Section 21(2) of the Act provides some criteria for the Ministry to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. The Ministry submits that section 21(2)(h) is relevant to this appeal. This position is echoed by the affected person who also indirectly raises section 21(2)(e) as having potential relevance in the circumstances of this appeal. The appellant submits that sections 21(2)(a) and (g) apply. These sections state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

The Ministry states that the record was submitted implicitly in confidence by its author to an employee of the Ministry. This position is substantiated by the affected person whose representations also provide concrete evidence as to why section 21(2)(e) is a valid consideration. I have carefully reviewed the contents of the record and the representations provided to me and I agree that sections 21(2)(e) and (h), which favour privacy protection, are relevant considerations in the circumstances of this appeal.

In order to establish the relevance of section 21(2)(a), the appellant must provide evidence demonstrating that the activities of the Ministry have been publicly called into question, necessitating disclosure of the personal information of the affected person in order to subject the activities of the Ministry to public scrutiny. No evidence has been provided which would indicate that the public has questioned the Ministry's activities in relation to the incident described in the records and, in my view, the relevance of section 21(2)(a) has not been established in the circumstances of this appeal.

A finding that section 21(2)(g) is relevant would weigh in favour of privacy protection. As the appellant is seeking disclosure and I have found that other factors in favour of privacy protection are relevant in the circumstances of this appeal, it is not necessary for me to consider section 21(2)(g).

After carefully considering the contents of the record, the representations of the parties, the provisions of the Act, and all circumstances relevant to this appeal in balancing the rights of the appellant and the affected person, I find that disclosure of the record to the appellant would constitute an unjustified invasion of the personal privacy of the affected person. Accordingly, I find that section 49(b) of the Act applies.

Section 49(b) is a discretionary exemption. I have reviewed the Ministry's representations regarding the exercise of discretion in favour of withholding the record. I have found nothing improper and would not alter it on appeal.

**ORDER:**

I uphold the Ministry's decision.

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

February 3, 1994