



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

# **ORDER P-731**

**Appeal P\_9400186**

**Ministry of the Solicitor General and Correctional Services**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested information from the Ministry of the Solicitor General and Correctional Services (the Ministry). The request was for access to the results of a blood analysis of a named individual (the affected person) undertaken as part of a police investigation into a motor vehicle accident. The appellant is an insurance adjuster representing the affected person's automobile insurer.

The record which the Ministry identified as responsive consists of a one-page Certificate of Analysis. Partial access was granted to this document, but the result of the analysis was not disclosed.

The Ministry relies on the following exemption to deny access to the information which was withheld:

- invasion of privacy - section 21(1)

Notice that an inquiry was being conducted to review the Ministry's decision was provided to the appellant, the Ministry and the affected person. Representations were received from the appellant and the Ministry.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, as recorded information about an identifiable individual. In my view, the information contained in the part of the record which was not disclosed qualifies as the affected person's personal information.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. One such circumstance is where the individual to whom the information relates consents to the release of the information (section 21(1)(a)). That section states as follows:

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

upon the prior written request or consent of the individual,  
if the record is one to which the individual is entitled to  
have access;

The appellant submits that the affected person consented to the release of her personal information to the appellant by virtue of two provisions in the Ontario Automobile Policy, as follows:

- Part F - Statutory Conditions - Examination of Insured (section 4), and
- Part C - Loss of or Damage to Insured Automobile (section 3.4).

I will deal first with the provision relating to "Examination of Insured" under Part F, which states as follows:

The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in his or her possession or control that relate to the matter in question, and the insured shall permit extracts and copies thereof to be made.

This provision could be construed as a contractual obligation of insured persons to produce relevant documents in their possession or control to the insurer. In my view, however, it does not constitute written consent authorizing third parties, such as the Ministry, to disclose such information directly to the insurer or its representative without being instructed to do so by an insured person. Accordingly, I find that it does not constitute written consent to disclosure within the meaning of section 21(1)(a).

As noted, the appellant has also referred to the provisions of Part C of the Ontario Automobile Policy - Loss of or Damage to Insured Automobile, section 3.4. This section sets out a number of situations in which the insurer is relieved of liability. One of these situations is where the insured or any other authorized operator of the vehicle was "... under the influence of intoxicating substances to such an extent as to be incapable of proper control of the automobile ...". In my view, this part of the policy does not relate to the issue of whether the affected person consented to disclosure.

It is noteworthy that, in response to the Ministry's notification to her concerning the request (under section 28 of the Act), the affected person clearly indicated that she does not consent to the disclosure of the withheld information.

In the circumstances of this appeal, I find that the affected person has not consented to disclosure within the meaning of section 21(1)(a).

The only other exception to the exemption in section 21(1) which could apply is contained in section 21(1)(f). That exception applies where disclosure of the requested information does **not** constitute an unjustified invasion of personal 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 personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

In its representations, the Ministry submits that the following factors weigh against disclosure:

- the information was compiled and is identifiable as part of an investigation of a possible violation of law, and disclosure would constitute a presumed unjustified invasion of personal privacy - section 21(3)(b);
- the information relates to a medical history, diagnosis, condition, treatment or evaluation and disclosure would constitute a presumed unjustified invasion of personal privacy - section 21(3)(a);
- the information is highly sensitive - section 21(2)(f).

The appellant's reference to the provisions of Part C of the Ontario Automobile Policy, which relate to the insurer's obligations under the policy, could be interpreted as a reference to section 21(2)(d). That section provides a factor favouring disclosure in circumstances where the personal information is relevant to a fair determination of rights affecting the person who made the request.

Having carefully reviewed the evidence before me, I have made the following findings:

- (1) The blood analysis was conducted as part of a police investigation into possible violations of the Criminal Code and the Highway Traffic Act. Accordingly, the information which was withheld was compiled and is identifiable as part of an investigation into a possible violation of law, so the presumed unjustified invasion of personal privacy in section 21(3)(b) applies. Because I have made this finding, it is not necessary for me to consider the possible application of sections 21(2)(f) and 21(3)(a), which were first raised by the Ministry in its representations.
- (2) I have not been presented with sufficient evidence to substantiate the application of section 21(2)(d) and even if I had been, a presumed unjustified invasion of personal privacy cannot be rebutted by factors listed in section 21(2).
- (3) I find that section 21(4) does not apply to the responsive information which has not been disclosed, and the appellant has not claimed that section 23 of the Act applies in this appeal.
- (4) I find that disclosure of the responsive information which has not been disclosed would constitute an unjustified invasion of personal privacy and is properly exempt from disclosure under section 21(1) of the Act.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_ July 26, 1994