



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

ORDER P-709

Appeal P_9400084

Ministry of the Solicitor General and Correctional Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested copies of records from the Ministry of the Solicitor General and Correctional Services (the Ministry) relating to any internal complaint investigations in which he was the subject, or one of the subjects, from January 1987 onwards. Pursuant to section 28(1) of the Act, the Ministry notified 44 individuals (the affected persons) who had provided information to the Ministry about the appellant. Five individuals consented to disclosure of the information contained in their statements and one individual consented to partial release of the information in his statement. This information was disclosed to the appellant. The remaining affected persons either objected to release of the information or did not respond.

The records at issue in this appeal consist of the following:

- interview statements obtained from various individuals during the course of an investigation of complaints under the Police Services Act (the PSA).
- extracts of information taken from the above statements and incorporated into Part II of the Internal Investigation Report.
- the names of three individuals and their occupations, who were interviewed in the course of the investigation.

The Ministry relies on the following exemptions to deny access to this information:

- invasion of privacy - sections 21(1) and 49(b)
- law enforcement - sections 14(2)(a) and 49(a)

A notice of inquiry was provided to the appellant, the Ministry and 39 affected persons. Representations were received from both the appellant and the Ministry, as well as 20 affected persons who all objected to the release of the information which they provided.

PRELIMINARY MATTER:

The appellant submits that the approach which both the Ministry and the Commissioner's office took to the notification of affected persons was defective. This is the case because the notices did not indicate that failure to respond to the notices would be considered to be a deemed refusal to consent to release of personal information.

The appellant argues that a lack of response to the notices should be presumed to mean that the individuals consented to the disclosure of their personal information.

I do not agree with the appellant's position. In my view, consent cannot be presumed in this fashion. Consent must be given in writing in accordance with section 21(1)(a) of the Act which states that:

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; [emphasis added]

I am satisfied that the notices provided to the affected persons by the Ministry and the Commissioner's office complied with sections 28(2) and 50(3) of the Act, respectively.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined as recorded information about an identifiable individual. In my view, all of the information contained in the records qualifies as personal information. I further find that the personal information relates to the appellant and other individuals.

The Act gives individuals a general right of access to their own personal information held by a government body (section 47(1)). Section 49 provides a number of exceptions to this general right of access. One such exception is found in section 49(b) of the Act.

Under section 49(b), the Ministry must weigh the requester's right of access to his/her own personal information against the privacy interests of other individuals. If the Ministry determines that the disclosure of the information would be an unjustified invasion of another individual's personal privacy, then section 49(b) allows the Ministry to deny the requester access to his/her personal information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would be an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way in which such a presumption against disclosure can be overcome is where 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.

In its representations, the Ministry states that all of the information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law (s. 21(3)(b)). Therefore, the Ministry submits that the release of personal information would represent a presumed unjustified invasion of personal privacy.

The appellant states that disclosure of the information in the records is necessary to ensure a fair determination of his rights (s. 21(2)(d)) and because the information contained in the statements is inaccurate (s. 21(2)(g)).

The affected persons all submit that they supplied their information in confidence (s. 21(2)(h)). In addition, a number of affected persons indicate that their "statements" were not verbatim statements but rather paraphrased versions of their comments. They therefore submit that the information contained in the statements is unlikely to be accurate or reliable (s. 21(2)(g)).

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

- (1) Previous orders of this agency have determined that investigations of alleged violations of the PSA qualify as investigations into a possible violation of law for the purposes of section 21(3)(b) (Orders P-285, P-372 and P-626). I agree, and am satisfied that the investigation in this case qualifies as an investigation into a possible violation of law.
- (2) I find that the personal information contained in 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) of the Act.
- (3) None of this information falls within the scope of section 21(4). Nor has the appellant submitted that section 23 of the Act applies to this personal information.
- (4) Accordingly, the exemption in section 49(b) applies.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ June 22, 1994