



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-749

Appeal P_9400181

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 a copy of the service record of a named OPP officer (the officer) from the Ministry of the Solicitor General and Correctional Services (the Ministry). The records at issue are the contents of the officer's personnel file.

The Ministry denied access to the records relying upon the following exemption:

- invasion of privacy - section 21(1).

In reaching its decision, the Ministry notified the officer, who did not consent to the disclosure of the requested records.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records and I find that most of their contents consist of recorded information about the officer, including details of his educational and employment history, and therefore constitute his personal information. The records also contain some information which pertains to other identifiable individuals, and constitutes their personal information. In summary, I find that the records in their entirety consist of the personal information of individuals other than the appellant.

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.

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 Ministry 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 records relate to employment and educational history (section 21(3)(d)) and also contain personal recommendations or evaluations, character references or personnel evaluations (section 21(3)(g)), and therefore, disclosure of the records would be a presumed unjustified invasion of the personal privacy of the officer.

In his representations, the appellant alleges that the officer is involved in a conflict of interest which is interfering with the performance of his duties. This submission appears to raise the possible application of section 21(2)(a), which applies where disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny. While the factor in section 21(2)(a) could not overturn a presumed unjustified invasion of personal privacy under section 21(3) (Order M-170), it could be relevant to any portions of the records which do not fall under a presumption.

The appellant also submits that there is a compelling public interest in the disclosure of the records, which clearly outweighs the purpose of the section 21 exemption. This submission relates to section 23 of the Act, and is based on the same considerations referred to above with respect to section 21(2)(a).

I have carefully reviewed the evidence before me and the records at issue and I make the following findings:

1. Most of the information in the records consists of the employment and educational history of the officer, as well as personal recommendations and evaluations, character references and personnel evaluations. Accordingly, I find that disclosure of this information would be a presumed unjustified invasion of personal privacy under sections 21(3)(d) and (g).
2. The appellant has not provided sufficient evidence to substantiate the application of the factor favouring disclosure in section 21(2)(a) with respect to any information in the records which is not subject to a presumed unjustified invasion of personal privacy under section 21(3).
3. I find that section 21(4) does not apply to any information in the records.
4. Because I have found that disclosure of most of the information in the records would constitute a presumed unjustified invasion of personal privacy under sections 21(3)(d) and (g), and because no factors favouring disclosure of the remaining information have been established, I find that the disclosure of any part of the records would constitute an unjustified invasion of personal privacy. Accordingly, the exemption in section 21(1) applies to the records in their entirety.
5. I find that section 23 does not apply in the circumstances of the appeal, since I am not persuaded that there is a compelling public interest in disclosure which outweighs the purpose of the section 21 exemption.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
John Higgins
Inquiry Officer

_____ August 31, 1994