



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

ORDER P-678

Appeal P-9400034

Ministry of the Solicitor General and Correctional Services



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ORDER

BACKGROUND:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for information relating to the investigation of a fatal motor vehicle/bicycle accident, including all notes taken by the investigating officer, photographs, written witness statements and any other records relating to the investigation of this accident. The requester is a parent of the individual who died in the accident (the deceased).

The Ministry located 44 pages of records that were responsive to the request. Pursuant to section 28 of the Act, the Ministry notified a number of individuals whose interests might be affected by the disclosure of the requested records.

Two of the individuals consented to the release of their personal information. These records were released to the requester. One individual did not consent to the release of his personal information and one individual did not respond.

After considering the submissions made, the Ministry granted partial access to the records. Access was denied to portions of the records pursuant to sections 14(1) and 21(1) of the Act. The requester appealed the Ministry's decision.

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 records at issue in this appeal consist of those portions of witness statements, the investigating officer's notebook, a supplementary report and the on-scene report which were not disclosed to the appellant. The Ministry claims that parts of these records, namely pages 18, 19, 23, 24, 25, 26, 29, 30, 31 and 32 (police officer notes), and part of page 34 (supplementary report) are not responsive to the request.

I have carefully reviewed these portions of the records. I agree that all portions of pages 18, 19, 24, 25, 26, 29, 30, 31 and 32 which the Ministry claims are not applicable to the request fall outside the scope of the request.

In my view, all of page 34 is responsive to the request as it is worded. With the exception of the last two lines on page 23, all of this page is responsive as well.

ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.
- C. Whether the discretionary exemption provided by section 14(1) of the Act applies to the records at issue.

SUBMISSIONS/CONCLUSIONS:

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

Section 2(1) of the Act states, in part, that "personal information" means "recorded information about an identifiable individual". Section 2(2) then goes on to specify that personal information does not include information about an individual who has been dead for more than 30 years.

In my view, all of the information contained in the records at issue qualifies as personal information for the purposes of section 2(1) of the Act. I further find that this information relates to a number of identifiable individuals, including the deceased. In addition, section 2(2) of the Act does not apply to the personal information of the deceased as the death occurred within the past 30 years. Finally, none of the information at issue relates to the appellant.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

In Issue A, I found that all of the records contain the personal information of identifiable 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 to any person other than to the individual to whom the information relates, except in certain circumstances. One such situation is outlined in section 21(1)(f) of the Act, which reads as follows:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

In order to establish that section 21(1)(f) applies, it must be shown that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

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.

In their representations, the Ministry submits that section 21(3)(b) of the Act applies to the records. This section reads as follows:

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;

I have carefully reviewed the records at issue, along with the representations provided by the Ministry. I am satisfied that the information contained in the records was compiled as part of an OPP investigation into a fatal motor vehicle accident. That investigation was directed towards determining whether there had been a possible violation of The Criminal Code or the Highway Traffic Act. On this basis, I am satisfied that the personal information contained in the records falls within the section 21(3)(b) presumption.

The only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act or where a compelling public interest exists in disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 21 exemption (Order M-170).

I have considered section 21(4) of the Act and find that none of the personal information in the records comes within the scope of this provision. In addition, the appellant has not provided representations with respect to the applicability of the public interest override set out in section 23 of the Act.

Accordingly, I find that the disclosure of the personal information contained in the records would constitute an unjustified invasion of the personal privacy of the individuals

to whom the information relates and that the records are properly exempt from disclosure under section 21(1) of the Act.

Because of the manner in which I have disposed of Issues A and B, it is not necessary for me to consider Issue C.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ May 12, 1994