



Information and Privacy  
Commissioner/Ontario

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

## **ORDER P-793**

Appeal P-9400338

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 Ministry of the Solicitor General and Correctional Services (the Ministry) received a six-part request for access to records relating to an Ontario Provincial Police (the OPP) investigation. In particular, the appellant requested access to specific reports relating to the disappearance of an individual (the missing person) and statements provided to the OPP by a number of named individuals (the affected persons). The appellant is the mother of the missing person.

Pursuant to section 28(1) of the Act, the Ministry notified the affected persons that the request had been made. One of the affected persons consented to the release of his personal information and it was released to the appellant. This information is contained in one of a number of records which relate to part 5 of the request, and is not at issue in this appeal. Two affected persons could not be located and the remaining affected persons refused to consent to the release of their personal information.

The Ministry relies on the following exemption to deny access to the information contained in the records at issue:

- invasion of privacy - section 21(1)

In addition to this exemption, the Ministry claims that one of the requested occurrence reports (which relates to part 1(b) of the request) does not exist. The Ministry further advised the appellant that the original of one of the occurrence reports (which relates to part 1(a) of the request) had been destroyed pursuant to Ministry retention schedules. The Ministry indicated, however, that a copy of the report had been located in a Freedom of Information file relating to a previous request made by the appellant. This copy of the report was provided to the appellant.

The appellant takes the position that the copy of the occurrence report which was sent to her was not responsive to her request. She also disputes the Ministry's claim that the original of the report was destroyed, and that the second report does not exist.

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

The records at issue consist of police occurrence reports and interview statements. Following mediation, the issues remaining to be determined are:

- whether the copy of the occurrence report provided to the appellant is responsive to her request;
- whether the Ministry's search for records responsive to the appellant's request was reasonable in the circumstances of this appeal;
- whether the exemption in section 21 of the Act is applicable to the records at issue in this appeal.

During the inquiry stage of this appeal, it was determined that portions of the records may contain information relating to the appellant. Section 49(b) was, therefore, raised and the parties were invited to submit further representations on this issue. Representations were received from both parties.

## **DISCUSSION:**

### **RESPONSIVE RECORDS**

In her representations, the appellant indicates that the missing persons report was originally made by her on April 28, 1990 at 9:00 in the morning. The copy of the report she received was dated April 29, 1990. The "reported by" section of the report indicates that it was made by another individual, and it was signed by this same individual. The appellant acknowledges that the missing persons report concerning her son was, in fact, signed by this individual. She claims, however, that the report contains many errors, and is not the report which was originally made by her. She believes that there must be another report made in her name which the Ministry is withholding from her.

The Ministry states that the copy of the report received by the appellant is the report she requested. In explaining the discrepancy in dates, the Ministry indicates that the constable who responded to the missing persons call initiated the report on April 28, but did not complete it until the end of his shift on April 29, 1990.

I have reviewed the record at issue and considered the representations of the parties. In my view, the copy of the occurrence report which the appellant received is the report she requested.

### **REASONABLENESS OF SEARCH**

In her letter of appeal, the appellant indicates that she has been trying to obtain the two reports at issue since 1990. She cannot understand how the original of the one report could have been destroyed given the on-going attempts by her to obtain it. She also questions whether the Ministry had destroyed the second report.

Where a requester provides sufficient details about the records to which she is seeking access and the Ministry indicates that no responsive records can be located, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. In my view, the Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

With respect to the destruction of the first report, the Ministry states that the retention schedule for occurrence reports is two years plus the current year. As the report was made in April 1990, it was scheduled to be destroyed in April 1993. The Ministry confirms that the original report was destroyed.

The Ministry indicates further that in response to an access request made by the appellant in 1991, the original occurrence report was retrieved from the OPP detachment, photocopied and then returned to the detachment upon completion of the request. As the copy of the record was still in the possession of the Freedom of Information office of the Ministry, it was retrieved and included as responsive to the request.

With respect to the second report which the appellant believes should exist, the Ministry states that the record does not exist as a second report was never filed. The Ministry was advised by the detachment that since a missing persons report had already been filed by one party, it was not necessary to file a second report. The Ministry indicates that this is the routine procedure followed by the OPP and is not particular to this case.

I have carefully reviewed the representations of the parties. I accept the Ministry's explanation for the non-existence of the two reports identified by the appellant. I am, therefore, satisfied that the Ministry has taken all reasonable steps to locate any records responsive to the appellant's request.

## **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

The records at issue consist of two statements given by one affected person, dated May 1990 and July 1992 (which relate to parts 3 and 5 of the request), and statements given by six other affected persons (which relate to part 6 of the request). It should be noted that each of the six affected persons identified in part 6 of the request provided more than one statement.

I have carefully reviewed all the records at issue in this appeal to determine if they contain "personal information" and, if so, to whom the personal information relates. I have made the following findings on this issue:

- (1) The two statements which relate to parts 3 and 5 of the request, and two statements given by one of the affected persons identified in part 6 of the request, contain the personal information of the appellant **and** other individuals.
- (2) The remaining records contain the personal information of other individuals only.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits the Ministry from releasing this information.

In both these situations, 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. Where one of the presumptions found 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 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.

If none of the presumptions contained 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 considerations that are relevant in the circumstances of the case.

In its representations, the Ministry submits that the presumption against disclosure contained in section 21(3)(b) of the Act (information compiled and identifiable as part of an investigation into a possible violation of law) applies to the information contained in all of the records.

I will first address the records which contain the personal information of the appellant and other individuals.

The appellant states that she is not interested in receiving information about the individuals who provided the statements. Rather, she only wishes to see what was said about her and her son. She maintains that she requires this information for the purpose of identifying and correcting discrepancies in the information.

I have reviewed the representations of the parties and the records at issue and have made the following findings:

- (1) The records were compiled by the OPP during their investigation into a possible violation of the Criminal Code. Accordingly, I am of the view that the presumption contained in section 21(3)(b) applies to all of the records.
- (2) 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.

- (3) Accordingly, the exemption in section 49(b) applies to the two statements which relate to parts 3 and 5 of the request (Pages 7, 8 and 34-36), and the two statements given by one of the affected persons identified in part 6 of the request (Pages 69 and 70-81).

The remaining records are those containing the personal information of individuals other than the appellant.

Based on the same analysis that I have just undertaken, I find that the personal information contained in these records also falls within the presumption in section 21(3)(b) of the Act and that this presumption has not been rebutted. Accordingly, the information at issue in these records is exempt from disclosure under section 21(1) of the Act.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ November 14, 1994