



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-893

Appeal P-9400531

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 access to records held by the Ministry of the Solicitor General and Correctional Services (the Ministry). The request pertains to documents summarized or referred to in a specific Ontario Provincial Police (OPP) investigative report. The appellant was arrested by the OPP in connection with the investigation.

Following consultation with affected persons pursuant to section 28 of the Act, the Ministry decided to grant partial access to the responsive records, which consist of police officers' notes, officers' duty reports, and witness statements. Access was denied to the dates of birth, home addresses and telephone numbers of affected persons (which appear in the officers' notes), several duty reports filed by investigating officers, and witness statements given to the OPP by a number of affected persons. In denying access to this information, the Ministry relied on the following exemptions:

- discretion to deny access to requester's own information - section 49(a)
- law enforcement - section 14(2)(a)
- invasion of privacy - section 49(b).

In addition, the Ministry did not consider a number of records when it processed the request on the basis that they originally came from another institution, and directed the requester to forward a request for these records to the other institution. Other information was deleted as non-responsive.

The appellant filed an appeal of the Ministry's decision.

A Notice of Inquiry was sent to the appellant and the Ministry. Representations were received from the Ministry only.

## **DISCUSSION:**

### **RESPONSIVENESS OF RECORDS**

As noted above, the Ministry deleted some information from the records which were disclosed on the basis that it was not responsive to the request. This information appears on record pages 71, 72, 73, 74, 76, 77 and 83 (using the page numbers assigned by the Ministry). The deleted passages consist of police codes, and other information relating to police officers' activities which are not related to the subject of the request.

I agree with the Ministry that these passages are non-responsive to the request and I will not consider them further in this appeal.

### **PERSONAL INFORMATION**

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.

I have reviewed the records at issue. I find that each of them contains the appellant's personal information. I also find that each of the records at issue (including those which were only partially withheld) contains the personal information of other individuals.

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

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT**

Under section 49(a) of the Act, the Ministry has the discretion to deny access to records which contain an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include the law enforcement exemption provided by section 14. The Ministry has claimed that the records are exempt under section 49(a) because they qualify for exemption under section 14(2)(a). In the discussion which follows, I will consider whether certain records qualify for exemption under this section as a preliminary step in determining whether the exemption in section 49(a) applies.

In view of the disposition I will make below, under "Invasion of Privacy" with respect to some of the records at issue, I will limit my consideration of sections 49(a) and 14(2)(a) to the duty reports filed by investigating officers (which comprise record pages 85 through 96, inclusive, using the page numbers assigned by the Ministry).

In order for a record to qualify for exemption under section 14(2)(a), the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act, which states as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

In addition, for a record to qualify for exemption under section 14(2)(a) of the Act, the Ministry must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

I have reviewed the records being considered under this section, and the representations submitted to me. In my view, it is clear that the subject matter of these records meets the requirements of part (a) of the definition of "law enforcement" (quoted above) because it concerns policing matters. Moreover, the records meet the requirements of part (b) of the definition because they were created as part of an investigation which could have led to charges under the Criminal Code, and a court could have imposed a penalty if the matter had proceeded to trial. Accordingly, I find that the records meet the definition of "law enforcement".

I am satisfied that these records were reports within the meaning of section 14(2)(a), because they consist of "a formal statement or account of the results of the collation and consideration of information" (Order 200). I am also satisfied that these reports were prepared in the course of law enforcement, having been prepared by police officers during the course of an investigation. Finally, it is clear that the OPP has a law enforcement mandate relating to the very statute under which charges could have been laid, namely the Criminal Code.

Accordingly, all the necessary elements are established and I find that the officers' duty reports qualify for exemption under section 14(2)(a). Accordingly, they are exempt under section 49(a).

## **INVASION OF PRIVACY**

Because of the determination I have made above with respect to the police officers' duty reports, I will not consider those records in this discussion. The records which remain to be considered consist of witness statements (withheld in full) and extracts from police officers' notebooks (withheld in part). The witness statements comprise record pages 97 through 103, using the page numbers assigned by the Ministry. The responsive passages from the police officers' notebooks are found on record pages 63 through 84 (also based on the Ministry's page numbering). I have previously found that these records all contain the personal information of the appellant and other individuals.

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

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 institution 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.

The Ministry submits that the presumption in section 21(3)(b) applies. That section states:

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 reviewed the records and parts of records being considered under this exemption, and the representations submitted to me, and I make the following findings:

- (1) Because the records were clearly compiled, and are identifiable, as part of an investigation into a possible violation of law (namely, the Criminal Code), the presumption in section 21(3)(b) applies.
- (2) Sections 21(4) and 23 do not apply to this information.
- (3) Disclosure of any of the withheld information in these records would constitute an unjustified invasion of the personal privacy of individuals other than the appellant, and accordingly, the exemption in section 49(b) applies to all of it.

**ORDER:**

I uphold the decision of the Ministry.

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

\_\_\_\_\_  
March 23, 1995

**POSTSCRIPT:**

In the section entitled "Nature of the Appeal", above, I referred to the fact that the Ministry did not consider a number of records when it processed the request because they originally came from another institution. The Ministry was of the view that the other institution had a greater interest in these records. For this reason, the Ministry directed the appellant to make a request for these records to the other institution. While this was not an issue in this case, I would direct the Ministry's attention to the provisions of section 25(2) of the Act, which states:

Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

Although this is a discretionary provision, I am of the view that if the Ministry was not going to transfer the request, it ought to have made an access decision relating to these records, which were apparently in its custody.