



Information and Privacy  
Commissioner/Ontario

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

## **ORDER P-932**

Appeal P-9400550

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 request for copies of all records pertaining to complaints made by the requesters concerning the misconduct of O.P.P. officers in 1989 and 1990, including all statements, investigations and results of any investigations conducted. The requesters had been involved in a number of occurrences which involved the O.P.P.

The Ministry located 342 pages of records and, following third party notification, granted partial access to them. The Ministry denied access in full or in part to 49 pages on the basis of the following exemptions:

- discretion to refuse requester's own information - section 49(a)
- law enforcement - sections 14(1)(g) and 14(2)(a)
- invasion of privacy - section 49(b)

In appealing the Ministry's decision, the appellants indicated that they believe the O.P.P. is covering up harassment and misconduct by its officers. They further believe that it is unreasonable to withhold information that is related to their complaints.

A Notice of Inquiry was provided to the Ministry and the appellants. Representations were received from both parties. During the Inquiry stage of this appeal, the Ministry issued a supplementary decision which indicated that it had reconsidered its earlier decision to withhold two pages (pages 303 and 304). These pages are, therefore, not at issue in this appeal.

The records consist of the following:

- occurrence reports and/or supplementary reports (pages 9 - 11, 68 - 69, 84, 289, and 330 - 333)
- Duty Reports completed by O.P.P. officers pertaining to the complaints and are in the nature of witness statements (pages 36 - 38, 52 - 53, 54 - 56, 89 - 90 and 328 - 329)
- witness statements (pages 39, 40 - 42, 43 - 46, 47, 48 - 49, 50, 51, 86 and 87 - 88)
- Report to the Deputy Commissioner Re: Search of Appellants' residence (pages 278 - 285)

**DISCUSSION:  
PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. In their representations, the appellants indicate that they are not interested in obtaining access to the name of a female witness which has been withheld from pages 9 - 11, or to the names of the individuals who provided statements (pages 40 - 56). The names of these individuals, therefore, are not at issue in this appeal. Having reviewed the records and the representations, I find that, even with the names removed, the records all contain the personal information of a number of identifiable individuals. The records also contain the personal information of the appellants.

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.

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

Under section 49(a) of the Act, the institution has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. One of the exemptions mentioned in section 49(a) is the law enforcement exemption in section 14 of the Act.

In its representations, the Ministry claims that section 14(1)(g) applies to pages 278 - 285. It indicates further that section 14(2)(a) applies to "the records". On the copies of the records provided to the Commissioner's office, the Ministry has indicated that section 14(2)(a) was also applied to pages 278 - 285.

In view of the disposition I will make below, under "Invasion of Privacy" with respect to the majority of the records at issue, I will limit my consideration of section 14 to section 14(2)(a) as it has been applied to pages 278 - 285. In the discussion which follows, I will consider whether these pages qualify for exemption under section 14 as a preliminary step in determining whether the exemption in section 49(a) applies.

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.

As I indicated above, pages 278 - 285 consist of a single report to the Deputy Commissioner from the Superintendent of the Kenora Division regarding a search of the appellants' residence. I have reviewed this record (pages 278 - 285), and the representations submitted to me. In my view, it is clear that the subject matter of the record meets the requirements of part (a) of the definition of "law enforcement" because it concerns policing matters. Moreover, the record meets the requirements of part (b) of the definition because it was created as part of an investigation which led to charges under the Criminal Code and Narcotic Control Act, for which a court could impose a penalty. Accordingly, I find that pages 278 - 285 meet the definition of "law enforcement".

I am satisfied that this record is a report within the meaning of section 14(2)(a), because it consists of "a formal statement or account of the results of the collation and consideration of information" (Order 200). I am also satisfied that this report was prepared in the course of law enforcement, having been prepared by a police officer during the course of an investigation. Finally, it is clear that the O.P.P. has a law enforcement mandate relating to the very statutes under which charges were laid, namely the Criminal Code and the Narcotic Control Act.

Accordingly, all the necessary elements are established and I find that pages 278 - 285 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 pages 278 - 285, I will not consider those pages in this discussion. The records which remain to be considered consist of witness statements and Duty Reports in the nature of witness statements (withheld in full) and portions of Occurrence Reports and

Supplementary Reports. I have previously found that these pages all contain the personal information of the appellants 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 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.

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.

The Ministry submits that the presumption in section 21(3)(b) applies. This 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) The portions of pages 84, 289 and 330 - 333 which have been withheld contain references to other individuals only. All information pertaining to the appellants has been disclosed to them. The withheld portions were compiled, and are identifiable, as part of an investigation into possible violations of law, namely, the Criminal Code, and the presumption in section 21(3)(b) applies to these portions.
- (2) The remaining pages or parts of pages being considered in this discussion relate to the O.P.P.'s investigation into allegations of misconduct under the Police Act, by named officers. In previous orders of the Commissioner, investigations of allegations of violations of the Police Act and the current Police Services Act qualify as investigations into a possible violation of law, for the purposes of section 21(3)(b) of the Act (Orders P-285 and P-372). I agree. Accordingly, I find that these investigations qualify as investigations into possible violations of law, under section 21(3)(b) of the Act.

- (3) Sections 21(4) and 23 do not apply to any of this information.
- (4) Disclosure of any of the information which has been withheld in the pages being considered in this discussion would constitute an unjustified invasion of the personal privacy of individuals other than the appellants, and accordingly, the exemption in section 49(b) applies to all of it.

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_ May 24, 1995