



Information and Privacy
Commissioner/Ontario

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

ORDER P-942

Appeal P-9500023

Ministry of the Solicitor General and Correctional Services

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 from a solicitor seeking to determine whether his client (the appellant) was wearing a seat belt at the time of an accident investigated by the Ontario Provincial Police.

Access was granted to some responsive records. The record which remains at issue in this case is a witness statement given by an individual who was present when the accident occurred, to which access was denied in full.

The Ministry relies on the following exemptions in the Act to deny access to this record:

- law enforcement - sections 14(2)(a) and 14(2)(c)
- invasion of privacy - section 21(1).

A Notice of Inquiry was sent to the Ministry, the appellant, and the individual who made the statement in question (the affected person).

No representations were received in response to the Notice of Inquiry.

DISCUSSION:

Subsequent to the issuance of the Notice of Inquiry in this appeal, counsel for the affected person provided an unsevered copy of the record at issue to the appellant's counsel. Thus, the disclosure sought under the Act has now been accomplished by other means. I note in this regard that the copy in the Ministry's possession has no notations or marks of any kind to distinguish it from the copy given to the appellant. However, counsel for the appellant has refused to withdraw this appeal, indicating that he wants to pursue the appeal as a matter of principle.

In Order M-271, Assistant Commissioner Irwin Glasberg dealt with a situation in which the requester had obtained a copy of the record from someone other than the institution. In that case, he proceeded with the appeal because one of the issues was the appellant's desire to request a correction of personal information under section 36 of the Municipal Freedom of Information and Protection of Privacy Act (the equivalent of section 47 of the Act). He indicated that, in this situation, the institution in question would have to acknowledge that it had custody of the record for which the correction was to be requested. Also, the parties in that case had been involved in an ongoing series of requests and the Assistant Commissioner was of the view that his order might reduce the need for future appeals.

However, he also made the following comments of a more general nature about situations where an appellant already has the record at issue:

In the ordinary course of events, I would be extremely reluctant to apply the resources of the Commissioner's office to decide an appeal where the appellant is already in possession of the records at issue through legitimate means. In my view, such an exercise would serve no useful purpose. In addition, appeals of this nature consume the scarce resources of institutions and impede the ability of the Commissioner's office to deal with the files of other appellants.

I agree with these views and adopt them for the purposes of this appeal. In my view, some appeals may present circumstances (such as those referred to in Order M-271) which would justify proceeding even where an appellant has obtained a copy of the record at issue. However, in the absence of factors such as those present in Order M-271, the fact that an appellant has, by legitimate means, obtained a copy of the record at issue would render the appeal moot as regards that record, because any determination regarding access would have no practical effect.

In this case, I find that there are no factors such as those present in Order M-271 to warrant continuation of this appeal. I find that this appeal is moot and no useful purpose would be served by proceeding.

ORDER:

The appellant's appeal is denied.

Original signed by: _____

John Higgins
Inquiry Officer

June 13, 1995