



Information and Privacy
Commissioner/Ontario

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

ORDER P-892

Appeal P-9300346
(Reconsideration)

Ministry of the Solicitor General and Correctional Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

On January 12, 1994, I issued Order P-612 requiring that the Ministry of the Solicitor General and Correctional Services (the Ministry) disclose to the requester three occurrence reports which pertained to an incident at a correctional facility. In that order, I found that the presumption of an unjustified invasion of privacy provided by section 21(3)(b) of the Act did not apply to exempt the records from disclosure as they were not "compiled and identifiable as part of an investigation into a possible violation of law".

On February 18, 1994, the Ministry commenced an application to the Ontario Court (General Division) Divisional Court for a judicial review of Order P-612. The application remains before the Court.

On February 1, 1995, I received a request from the Ministry for the reconsideration of Order P-612. Following my review of the request, I determined that it met the criteria established by the Commissioner's office for the reconsideration of an order. Accordingly, I asked the Ministry, the appellant and three persons whose rights might be affected by the disclosure of the records to make representations on the issue of my jurisdiction to reconsider the order as well as the substantive issues raised by the Ministry's request for reconsideration. Representations were received from the Ministry, the appellant and one of the affected persons.

DISCUSSION:

JURISDICTION TO RECONSIDER

The Commissioner's office has adopted a policy to apply when a request for the reconsideration of an order is received. This policy states that an order should be reconsidered only when there is a fundamental defect in the adjudication process, some other jurisdictional defect in the order or where the order contains a typographical or other clerical error which has a bearing on the decision. I have concluded, following a review of Order P-612, the records at issue and the representations of the parties, that there was a fundamental defect in the adjudication process in my original decision. As a result of my misinterpretation of section 21(3)(b) to the records, the decision in Order P-612 was flawed.

Accordingly, I find that the Ministry's request for reconsideration falls within the policy statement of the Commissioner's office and that I have the jurisdiction to reconsider Order P-612.

SUBSTANTIVE ISSUE

INVASION OF PRIVACY

In Order P-612, I found that the three records at issue in the appeal contain the personal information of the appellant and four affected persons, one of whom consented to the disclosure of her personal information to the appellant. I found, however, that the disclosure of the records would not constitute an unjustified invasion of personal privacy and ordered that they be disclosed to the appellant.

In its original submissions and the representations received in the course of the reconsideration of the order, the Ministry maintains that the presumption provided by section 21(3)(b) applies to exempt the contents of the records from disclosure. This provision states that:

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;

The Ministry relies upon Order P-666, issued by Assistant Commissioner Irwin Glasberg on April 27, 1994, in support of its argument that the definition which I applied to the word "compiled" in Order P-612 was incorrect. Assistant Commissioner Glasberg declined to apply the narrow definition which I had applied to the term "compiled" in Order P-612. Rather, he took a broader view, finding that the ordinary meaning of compiled, for the purposes of section 21(3)(b), is to collect, gather or assemble together. He further held that to compile does not mean to "create at first instance".

The Assistant Commissioner went on to find that to fit within the parameters of the section 21(3)(b) exemption, it is not necessary for information to have been originally created or prepared for a specific investigation. It was further found in Order P-666 that "the section 21(3)(b) presumption will apply as long as the personal information was, at some point in time, assembled or gathered together as part of the investigation".

Having reflected on this interpretation, I adopt the approach taken by Assistant Commissioner Glasberg for the purposes of this reconsideration. I must now determine on the facts of the present appeal whether the records which are at issue were in fact "compiled" as part of an investigation into a possible violation of law. In its representations, the Ministry indicates that the occurrence reports "are an integral part of the investigation file compiled and maintained by the Peel Regional Police", which conducted the actual investigation.

The Peel Regional Police (the Police) undertook an investigation into a possible violation of law but ultimately decided not to lay charges. Copies of the records at issue were provided to the Police by officials at the correctional facility as part of their investigation.

Following my review of the records and the representations of the parties, I have once again determined that the records contain the personal information of the appellant and four affected persons. Further, I find that the records at issue were compiled and are identifiable as part of an investigation into a possible violation of law within the meaning of section 21(3)(b). Accordingly, the disclosure of the records would result in an unjustified invasion of the personal privacy of the affected persons and, therefore, the records are properly

exempt from disclosure under section 21(1).

ORDER:

I uphold the decision of the Ministry and rescind the order provisions of Order P-612.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ March 22, 1995