



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1025

Appeal P-9500367

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 requester, an officer with the Ontario Provincial Police (the O.P.P.), made a request to the Ministry of the Solicitor General and Correction Services (the Ministry) for access to a specific file which documented an investigation of the requester's conduct undertaken by the O.P.P.'s Professional Standards Branch. The Ministry located and identified 43 pages of records, granted access, in whole or in part, to 38 pages and denied access to the remaining five pages in their entirety. The Ministry claimed the application of the following exemptions under the Act to the undisclosed portions of the records:

- law enforcement - sections 14(1)(d) and 14(2)(a)
- discretion to refuse requester's own personal information - section 49(a)
- invasion of privacy - sections 21 and 49(b)

The requester appealed the decision to deny him access to the undisclosed information contained in the responsive records. During the mediation stage of the appeal, the appellant agreed to limit the extent of his appeal to those records which identified the individual (the affected party) whose statement formed the basis for the investigation. This information is contained in pages 13, 14, 16, 17, 20-25, 32, 34-36.

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

Page 18 was included erroneously as one of the records at issue in the Notice of Inquiry. The Ministry submits that the information which was not disclosed in this record is not responsive to the request. I have reviewed the information contained in Page 18 and agree that the information which was severed is not responsive to the request. I will, therefore, not be considering the information contained in this page further.

DISCUSSION:

PERSONAL INFORMATION

The Ministry submits that the information contained in the records at issue is the personal information of the appellant and the affected party.

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 and agree that they contain the personal information of both the appellant and the affected party.

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 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 contained in section 21(3)(b) applies to the personal information which remains undisclosed. In addition, it has identified the considerations set out in sections 21(2)(e) (that the individual to whom the information relates will be exposed to pecuniary or other harm) and 21(2)(h) (that the information was provided to the Ministry in confidence) as being relevant factors in their decision. The appellant submits that section 21(2)(d) (the information is relevant to a fair determination of his rights) is a relevant consideration.

In order to qualify for exemption under section 21(3)(b), the records must relate to an investigation into a possible violation of law. The Ministry states that this investigation was conducted under the Police Services Act into the conduct of the appellant. Past orders have found that an investigation under the Police Services Act qualifies as an investigation into a possible violation of law for the purposes of the Act.

I have reviewed the records at issue and find that they have been compiled and are identifiable as part of an investigation into a possible violation of law, in this case the Police Services Act. I find, therefore, that the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) has been satisfied. Further, I find that none of the information falls under section 21(4) and that the appellant has not raised the application of section 23. I am satisfied, therefore, that the disclosure of the information contained in the remaining pages would constitute an unjustified invasion of another individual's personal privacy, and that it is exempt under section 49(b).

As I have found that the information contained in the records is exempt under section 49(b), it is not necessary for me to consider the application of section 14 to the records.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____ October 13, 1995
Donald Hale
Inquiry Officer