



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1125

Appeal P-9500576

Ontario Insurance Commission



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NATURE OF THE APPEAL:

The appellant is an insurance agent registered under the Insurance Act. He was the subject of a complaint letter to the Ontario Insurance Commission (the OIC) written by two individuals who described themselves as his former clients. The OIC investigated the allegations. After the investigation was completed, the appellant submitted a request to the OIC under the Freedom of Information and Protection of Privacy Act (the Act) for a copy of the complaint letter.

The OIC denied access to the letter pursuant to the following provisions in the Act:

- law enforcement - section 14(1)(d)
- invasion of privacy - section 21(1).

The appellant filed an appeal of this decision.

A Notice of Inquiry was sent to the authors of the complaint letter (the complainants), the appellant and the OIC. Because the letter appeared to contain the personal information of the appellant, the Notice of Inquiry raised the possible application of sections 49(a) and (b) of the Act. These sections relate to records which contain a requester's own personal information.

In response to the Notice of Inquiry, the appellant, the OIC and the complainants all submitted representations.

The complaint letter is the only record at issue.

DISCUSSION:

PERSONAL INFORMATION/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the complaint letter. I find that it contains personal information pertaining to the appellant and the complainants. It also contains references to the deceased spouse of one of the complainants which qualifies as that individual's personal information.

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(a) of the Act, the institution has the discretion to deny access to records which contain an individual's own personal information in instances where certain exemptions, including the one provided by section 14(1)(d) of the Act, would otherwise apply to that information. Section 49(a) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. (emphasis added)

I have held that the complaint letter contains the appellant's own personal information. Therefore, I will consider whether the letter qualifies for exemption under section 14(1)(d) as a preliminary step in determining whether section 49(a) applies to it.

LAW ENFORCEMENT

Section 14(1)(d) of the Act states as follows:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

In order for a record to qualify for exemption under this section, 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.

This definition 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 Order P-302, Assistant Commissioner Tom Mitchinson considered whether OIC investigations of complaints against insurance agents under the Insurance Act satisfy this definition. Based on the powers of the Superintendent of Insurance to convene hearings and impose sanctions in connection with such complaints, he found that OIC investigations of this type meet the definition. I agree, and accordingly, I find that the definition of "law enforcement" has been met in this case.

I will now turn to the requirements of the exemption itself, as enumerated in section 14(1)(d). A careful reading of this section makes it clear that the exemption may apply in two different sets of circumstances, namely, where disclosure could reasonably be expected to:

- disclose the identity of a confidential source of information in respect of a law enforcement matter, **or**

- disclose information furnished only by the confidential source.

I will begin my analysis with the part of the exemption summarized under the first bullet point, above.

The complainants submit that the record identifies, as confidential sources, not only themselves (a claim which I will discuss below), but also several other associated individuals. However, the record only refers to these associated individuals by identifying their business relationships with the complainants. It does not state their names, nor, in my view, is there any other information in the records which would identify them. I find that the description of these associated individuals in the record is not sufficient to disclose their identity.

Moreover, it was the complainants, and not these other individuals, who provided the information in the record to the OIC. For the purposes of section 14(1)(d), therefore, I find that these other individuals are not “sources” because they did not provide the information to the law enforcement agency (i.e. the OIC).

In this case, the only individuals who could qualify as “confidential sources” are the complainants. However, the OIC disclosed their identities to the appellant in its letter advising him of the complaint. The complainants were identified a second time in the OIC’s letter to the appellant communicating the results of the investigation. Therefore, I find that disclosure of the record would not serve to identify the confidential sources, because their identity is already known to the appellant.

Accordingly, I find that the aspect of the exemption summarized under the first bullet point, above, does not apply.

Under the second bullet point, I note that the essential allegations contained in the complaint letter were also disclosed to the appellant in the OIC’s letter to him, referred to in the preceding paragraph, in which they advised him of the complaint. With respect to any additional information contained in the letter, I am of the view that its source can no longer be considered “confidential” because, as noted above, the identities of the individuals who provided the information to the OIC (i.e. the complainants) have been made known to the appellant by the OIC. Therefore, in my view, the aspect of the exemption summarized under the second bullet point, above, also does not apply.

Since the OIC has not satisfied either aspect of this exemption, I find that the record does not qualify for exemption under section 14(1)(d). Accordingly, it is not exempt under section 49(a).

In making this finding, I am aware of the OIC’s submissions on section 14(1)(d), to the effect that disclosure of a complaint letter will have a “chilling effect” on the willingness of members of the public to submit such letters when concerns arise about insurance agents. This may indeed occur, but when sources cannot be considered “confidential” because of the OIC’s own actions in processing a complaint, the OIC has effectively precluded itself from claiming section 14(1)(d).

INVASION OF PRIVACY

As noted above, I have found that the record contains the personal information of the appellant, the complainants and the deceased spouse of one of the complainants.

The OIC initially claimed section 21 of the Act to avoid disclosure which would result in an unjustified invasion of personal privacy. However, it has been previously established that this exemption cannot be applied to records containing a requester's own personal information (Order M-352). In this case, I have found that the records **do** contain the appellant's own personal information, and accordingly, section 21 does not apply.

As previously noted, 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. I will consider whether this exemption applies to the personal information of individuals other than the appellant which is found in the record.

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 under section 49(b). 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 complainants argue that section 21(3)(b) applies to the record. 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.

It is clear that the record was compiled as part of the OIC's investigation into possible violations of the Insurance Act, and I find that this presumption applies to the personal information of individuals other than the appellant in the record, with one exception. As previously noted, the identities of the complainants, and much of the information in the letter about the relationship

between the complainants and the appellant, has already been disclosed to the appellant by the OIC. In my view, in the circumstances of this appeal, it would not be reasonable to apply this presumption (or any other presumptions or factors favouring non-disclosure) to information previously disclosed to the appellant.

I find that sections 21(4) and 23 do not apply to the information in the record which falls under the presumption, and it is exempt under section 49(b).

The information in the record which is **not** exempt consists of the appellant's own personal information, the identities of the complainants, and any other personal information of the complainants which was previously disclosed to the appellant by the OIC. I will order the OIC to disclose this information to the appellant.

I have highlighted the exempt information on a copy of the record which will be sent to the OIC's Freedom of Information and Privacy Co-ordinator with a copy of this order. The highlighted information should **not** be disclosed.

ORDER:

1. I uphold the OIC's decision to deny access to the information in the record which I have highlighted on the copy of the record which is being sent to the OIC's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the OIC to disclose the parts of the record which are **not** highlighted on the copy of the record which is being sent to the OIC's Freedom of Information and Privacy Co-ordinator with a copy of this order, by sending the severed record to the appellant on or before **March 20, 1996** but not before **March 15, 1996**.
3. To verify compliance with the provisions of this order, I reserve the right to require the OIC to provide me with a copy of the record disclosed in accordance with Provision 2.

Original signed by: _____
John Higgins
Inquiry Officer

February 14, 1996