



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

# **ORDER P-1153**

**Appeal P-9500732**

**Ministry of the Solicitor General and Correctional Services**



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## **NATURE OF THE APPEAL:**

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for information concerning a motor vehicle/bicycle accident in which the requester was severely injured. Specifically, the requester sought access to:

1. Copies of any and all statements associated with this accident and/or a copy of the investigating officer's notes.
2. Any photographs or contact proofs.
3. Diagram and measurements of the accident scene.

The requester subsequently narrowed the scope of his request to exclude the photographs, diagrams and measurements taken of the accident scene.

The Ministry granted partial access to records identified as responsive to the narrowed request, claiming the exemptions found in the following sections of the Act:

- invasion of privacy - sections 21(1) and 49(b)

In addition, portions of the investigating officer's notes were identified by the Ministry as not responsive to the request. The requester appealed the Ministry's decision to deny access.

During the mediation of the appeal, the appellant advised the Appeals Officer that he is not disputing that those portions of the records which were identified by the Ministry as not responsive to the request are properly outside the scope of his appeal. The records remaining at issue consist of four interview reports (pages one to four) and portions of the investigating officer's notebook (pages 6-14, 16 and 17).

A Notice of Inquiry was provided to the appellant, the Ministry and four individuals whose interests may be affected by the disclosure of the information at issue (the affected persons). Representations were received from the appellant and the Ministry. One of the affected persons advised the Appeals Officer that he will not be submitting representations but objects to the disclosure of his personal information. This office was unable to contact another affected person. The remaining two affected persons did not respond to the Notice of Inquiry.

## **DISCUSSION:**

### **TO WHOM DOES THE INFORMATION RELATE?**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the address and telephone number of an individual, the individual's name where it appears with other personal information relating to the individual, the personal opinions or views of the individual except where they relate to another individual and the views or opinions of another individual about the individual.

I have reviewed the information contained in each of the records and, in my view, pages one and three, as well as the undisclosed portions of the officer's notes, contain the personal information of the affected persons only. In addition, I find that pages two and four of the records contain the personal information of both the affected persons and the appellant.

The Ministry has applied sections 21 and 49(b) of the Act to the records at issue. I will assess the application of section 21 to the personal information of the affected persons and the appellant's personal information under section 49(b).

I have reviewed the records to determine whether the personal identifiers relating to the affected persons could be severed from the records in such a way that the remaining information would not be about an **identifiable** individual. In that case, section 21(1) would have no application to the remaining portions of the records and in the absence of any other exemptions, these portions could be disclosed. Because of the content of the information at issue, however, even with the personal identifiers removed, one can still, in my view, deduce the identity of the individuals to whom the information relates.

## **INVASION OF PRIVACY**

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 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 appellant access to that information. In this situation, the requester is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his or her own personal information, the only situation under section 49(b) in which he or she can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

Where, however, the record only contains the personal information of other individuals, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

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 the personal privacy of the individual to whom the information relates. 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.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors found in section 21(2) of the Act, as well as all other considerations which are relevant in the circumstances of the case.

### **Personal Information of Individuals other than the Appellant**

In its representations, the Ministry submits that the presumption in section 21(3)(b) of the Act applies to all of the information contained in the records. The Ministry submits that the records were compiled during the course of an investigation of a motor vehicle/bicycle accident by members of the Ontario Provincial Police to determine whether charges under the Criminal Code or the Highway Traffic Act should be laid. The Ministry argues that the disclosure of the information contained in each of the records would constitute a presumed unjustified invasion of the personal privacy of the affected persons under section 21(3)(b) which 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;

The appellant submits that section 21 does not apply to the records for the following reasons:

- the Defendant in the suit [one of the affected persons] has legal representation and the other affected persons may arrange for legal representation for the protection of their rights during the course of the civil proceedings;
- he is seeking accident details, not personal information. He states however, that he is interested in affected persons' statements, opinions, views and information as to how the accident occurred;
- he has received copies of three of the affected persons' interview report statements and supplementary interviews;
- the affected persons voluntarily provided information about the accident to the investigating officer without insistence for privacy or confidentiality. Further, there is no reference to privacy or confidentiality on the documents themselves;
- section 21(3)(b) assists his clients in securing the information at issue because this section of the Act does not specify who must continue the investigation or in which court the prosecution of the violation must be conducted. The institution of a civil court action on behalf of the Plaintiffs for negligence is within the Common Law rights of the injured Plaintiffs. There is an ongoing investigation of the accident as a result of the civil action initiated by his clients which will continue until a Supreme Court Judge makes a determination regarding liability.;

- he is not interested in any matter covered under section 21(4) of the Act and he does not believe that there is a compelling public interest in the disclosure of the record [section 23 of the Act].

The appellant also submits that he has commenced a civil action and that he requires the information at issue to pursue the action. This submission raises the possible application of the consideration in section 21(2)(d) of the Act (fair determination of rights). As stated above, however, factors favouring disclosure of the records under section 21(2) (such as section 21(2)(d)) cannot rebut the presumption in section 21(3)(b) of the Act.

The matter of whether affected persons have legal representation in the civil proceedings is not relevant to my determination of whether exemptions apply to the records at issue in this appeal. I have not been provided with copies of the interview statements which the appellant claims to have received, nor have I been informed as to the circumstances under which the appellant received these documents. The appellant's possession of these documents is not determinative of the issue of access to them under the Act.

Whether the affected persons provided their statements to the investigating officer voluntarily and without an expectation of confidentiality would be relevant only in an appeal where section 21(2)(h) of the Act has been claimed by the institution. Section 21(2)(h) has not, however, been raised as a consideration in this appeal.

With respect to the appellant's view that the information he seeks does not constitute personal information, I have addressed the issue of whether the records contain personal information and whether the records can be severed to remove personal information earlier in this order. The exception described in section 21(3)(b) refers to an investigation by a law enforcement agency and is not intended, as the appellant asserts, to assist in an investigation being undertaken by a requester.

I have carefully reviewed the representations and the records and I find that pages two and four, as well as the investigating officer's notes were compiled as part of an investigation into a possible violation of law. Accordingly, I find that the disclosure of the personal information which is contained in these records would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b).

I find that none of the personal information contained in these portions of the records falls under section 21(4). I also find that there is no compelling public interest in the disclosure of the records and accordingly, section 23 of the Act has no application in the circumstances of this appeal.

### **Personal Information of the Appellant**

In my view, the presumption contained in section 21(3)(b) has equal application to the personal information relating to the appellant and the affected persons which is contained in pages one and three of the records. I find that, as the requirements of a presumed unjustified invasion of personal privacy of individuals other than the appellant have been met, section 49(b) applies to exempt the appellant's personal information contained in pages one and three of the record from disclosure.

In summary, I find that the personal information contained in the records is exempt from disclosure under sections 21 and 49(b) of the Act.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ March 22, 1996