



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

ORDER P-1155

Appeal P-9500599

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to the Special Investigations Unit (the SIU) report and witness statements related to a car accident in which her son was killed. Her son was a passenger in a car which had been pursued by the police. After the pursuit, the car went out of control. The driver and two of the passengers, including one of the requester's sons, were killed. The SIU subsequently investigated the incident and the police were cleared of any wrongdoing.

The Ministry denied access to the final report pursuant to section 14(2)(a) of the Act (law enforcement report). The witness statement of the requester's other son, who had also been in the car, was disclosed. The balance of the statements were withheld on the basis that to disclose them would result in an unjustified invasion of personal privacy (section 21(1) of the Act).

The requester filed an appeal of the Ministry's decision.

The records at issue may be described as follows:

- (1) four-page report of the Director of the SIU;
- (2) three police witness statements of the officers involved in the incident; and
- (3) three civilian witness statements, including one from another passenger in the car.

During mediation, all of the witnesses were contacted to determine if they would consent to the disclosure of their statements. One of the civilian witnesses, the passenger, consented to the complete disclosure of her statement. Another civilian witness consented to the disclosure of his statement, provided that his name and address were removed. The other civilian witness did not respond to the notification. The Ministry was advised of these consents but did not disclose any portions of the statements from the two civilians who consented.

None of the police witnesses responded.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

LAW ENFORCEMENT REPORT

The Ministry has declined to disclose the SIU report on the basis of section 14(2)(a) which states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

For a record to qualify for exemption under this section, the Ministry must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[See Order 200 and Order P-324]

In Order 221, Commissioner Tom Wright made the following comments about part one of the test:

The word “report” is not defined in the Act. However, it is my view that in order to satisfy the first part of the test, i.e. to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

I agree with this approach and will apply it to the record at issue in this appeal. The SIU report provides an overview of the incident and a description of the events prior to, during and subsequent to the police pursuit. It outlines the guidelines which the Ministry of the Solicitor General has issued governing the pursuit of motor vehicles and analyses the conduct of this pursuit in the context of these guidelines. Finally, the report reaches a conclusion regarding the conduct of the police. In my view, the SIU report thus consists of a formal account of the results of the consideration of the information related to the accident. On this basis, I find that the record constitutes a “report” for the purposes of section 14(2)(a) of the Act, meeting part one of the test.

The SIU is established by section 113 of the Police Services Act and is charged with the investigation of “... the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers” (section 113(5)). The Ministry states that, in the event of such an incident, SIU investigators are dispatched to conduct an independent investigation into the incident with a view to determining whether any police officer may have committed a criminal offence in the circumstances. When the investigation is complete, a brief is submitted to the Director for review and determination. The Director, if reasonable grounds exist to do so, may cause informations to be laid against police officers in connection with the matters investigated and refers such informations to the Crown Attorney for prosecution. The Director is required to provide a report of the results of the investigation to the Attorney General (section 113(8)). It is such a report that is at issue in this case.

On the basis of the above, I find that the report was prepared in the course of a law enforcement investigation by the SIU, an agency which has the function of enforcing and regulating compliance with a law. Thus parts two and three of the test have been met and the record qualifies for exemption under section 14(2)(a) of the Act.

The appellant states that she feels that she should have received a written report from the SIU outlining how it reached its conclusion and indicating the factors which it considered in deciding that the police officers acted within the accepted pursuit guidelines. While I sympathize with the appellant in these circumstances, the report does satisfy the criteria necessary for exemption under section 14(2)(a) of the Act. The Ministry has provided submissions on its exercise of discretion in deciding not to disclose the report and the reasons given accord with accepted legal principles.

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable 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. Pursuant to section 2(2) personal information does not include information about an individual who has been dead for more than thirty years.

I have reviewed the six witness statements to determine if they contain personal information and, if so, to whom the personal information relates. I find that the statements contain the personal information of the civilian witnesses and the individuals who were in the car accident, including the appellant's deceased son. In addition, the information related to the three police witnesses constitutes their personal information as their actions in the pursuit have been called into question and investigated.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The exceptions which might apply in the circumstances of this appeal are sections 21(1)(a) and (f) which state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

I will first consider the application of section 21(1)(a).

The Ministry submits that, notwithstanding the fact that two of the civilian witnesses have consented to the disclosure of their statements, either in whole or in part, the statements cannot be disclosed. I agree with the Ministry's position that these statements contain the personal information of other individuals from whom no consents have been received. However, the witnesses who provided the statements can consent to the disclosure of their own personal information and have done so. I will consider the personal information of the other individuals contained in these two statements, as well as the other four statements, in the context of the section 21(1)(f) exception.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 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 circumstances that are relevant in the circumstances of the case.

The Ministry states that the personal information which has been withheld was compiled as part of the SIU investigation into a possible violation of law, i.e. the potential commission of criminal offences by the police officers who were involved in the incident. Accordingly, the Ministry argues that the presumption in section 21(3)(b) applies to exempt this information from disclosure. This section provides:

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;

Based on the submissions of the Ministry and my review of the records, I find that the personal information which I have identified above was compiled and is identifiable as part of an investigation into a possible violation of law, that is the Police Services Act. The information does not fall within the types of information listed in section 21(4). The appellant has not raised the possible application of section 23.

However, there are portions of the two consenting witness statements which, as I have indicated, do not contain the personal information of individuals who have not consented to the disclosure. Disclosure of this information would not result in an unjustified invasion of the personal privacy of any individuals.

I have provided a highlighted copy of these two witness statements to the Freedom of Information and Privacy Co-ordinator of the Ministry with a copy of this order. I have highlighted the portions which should not be disclosed.

ORDER:

1. I uphold the decision of the Ministry not to disclose the SIU Report, the statements of the police witnesses, the statement of the one civilian witness and the highlighted portions of the statements of the two consenting civilian witnesses.
2. I order the Ministry to disclose to the appellant the non-highlighted portions of the

statements of the two consenting witnesses by sending a copy of this information to the appellant by **April 26, 1996**.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.
4. If the Ministry is unable to comply with Provision 2 of this Order due to the current OPSEU strike, I order the Ministry to contact me through the Registrar of Appeals by **April 22, 1996** so that I may then consider any required adjustment to the compliance date and respond accordingly with notice to all parties.

Original signed by: _____

Anita Fineberg
Inquiry Officer

_____ March 27, 1996