



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

# **INTERIM ORDER P-1171**

**Appeal P-9600055**

**Ontario Insurance Commission**



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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 appellant, a homeowner, is involved in a dispute with the city in which his home is located. The dispute relates to flooding in the appellant's basement. The appellant's claim against the city was referred to its insurance adjusters, who investigated the matter and ultimately denied liability on the part of the city. Dissatisfied with this outcome, the appellant contacted the Superintendent of Insurance at the Ontario Insurance Commission (the OIC) to complain about the actions of the insurance adjuster. Following a review of the complaint, the OIC determined that it was not founded.

The appellant submitted a request under the Act to the Ministry of Finance (the Ministry) for copies of all records pertaining to his complaint. The Minister of Finance is the "head" of the OIC for the purposes of the Act. Requests and appeals under the Act are dealt with on behalf of the OIC by the Ministry. For ease of reference, this order will refer to actions taken by the Ministry on the OIC's behalf as actions of the OIC.

The OIC located seven responsive records and granted access to three of them. The OIC withheld the remaining four records from disclosure on the basis of the exemption in section 21(1) of the Act (invasion of privacy).

The appellant appealed this decision.

A Notice of Inquiry was provided to the OIC, the appellant and the insurance adjuster. Because the records appeared to contain the personal information of the appellant, the Notice of Inquiry raised the possible application of section 49(b) of the Act. This section provides an exemption which may apply to records containing an individual's own personal information.

In response to the Notice of Inquiry, representations were received from the appellant and the insurance adjuster only.

The records at issue consist of three pieces of correspondence between the OIC and the insurance adjuster and a record of a telephone conversation between an Agent Conduct Officer at the OIC and the insurance adjuster.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Section 2(1) of the Act defines personal information, in part, as "recorded information about an identifiable individual ...". I have reviewed the records to determine whether they contain personal information and, if so, to whom the personal information relates.

The records pertain to the OIC's response to the appellant's complaint against the insurance adjuster. As such, I find that each of the records at issue contains personal information of both the insurance adjuster and the appellant.

Where, as in this case, the records contain the personal information of the individual who made the request, section 21(1) does not apply. Rather, in such a case, the “invasion of privacy” exemption to consider is section 49(b) (Order M-352).

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.

In his representations, the appellant refers back to previous correspondence with the Commissioner’s office which details his dispute with the city and his views regarding the actions of the insurance adjuster. He adds that he is currently involved in an appeal (brought by the city) of a claim he made against the city in Small Claims Court. He submits that the information contained in the records at issue is necessary for a fair determination of his rights (section 21(2)(d) of the Act) with respect to this action. In this regard, the appellant argues that he requires the records in order to continue the investigation into this on-going dispute with the city and “to take appropriate subsequent action”.

He also submits that disclosure of the records is necessary “as a matter of public scrutiny” (section 21(2)(a)) in order to satisfy himself that the OIC’s conclusion is justified.

The insurance adjuster also refers to the current court action, and submits that disclosure of the records at issue would violate his privacy.

In my view, the appellant has a purely personal interest in a matter in which the OIC has taken a position which is contrary to his interests. In this case, I am not satisfied that the appellant’s disagreement with the OIC’s decision elevates the matter in such a way as to bring it within the scope of section 21(2)(a). Therefore, I find that section 21(2)(a) is not relevant in the circumstances.

I am also not satisfied that the factor which favours disclosure in section 21(2)(d) is relevant in the circumstances of this appeal.

In my view, a complaint brought against an individual which directly challenges his professional performance impacts significantly on that individual's personal and professional reputation. In this case, communications between the OIC and the insurance adjuster regarding the insurance adjuster's actions would be highly sensitive within the meaning of section 21(2)(f). Therefore, I find that this factor, which favours privacy protection, is relevant in the circumstances of this appeal.

I have found that there are no factors which weigh in favour of disclosure of the information contained in the records, however, I have found that one factor which weighs in favour of privacy protection is relevant in the circumstances of this appeal. In weighing the interests of the appellant in disclosure of the records against the factor favouring privacy protection, I find that disclosure of the records at issue would constitute an unjustified invasion of privacy.

However, section 49(b) of the Act is a discretionary exemption. As I indicated above, the OIC did not submit representations relating to the considerations which went into the decision to exercise discretion to apply the section 49 exemption. Nor were these considerations explained in its decision letter. Given the circumstances of this appeal, I order the OIC to provide representations to the Commissioner's office regarding its exercise of discretion in this matter.

## **ORDER:**

I order the OIC to provide me with written representations as to the factors considered in the exercise of discretion relating to the records at issue by **May 10, 1996**. These should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ April 26, 1996