



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

# **ORDER P-1237**

**Appeal P-9600076**

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



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The appellant, a law firm, requested information from the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The request related to information in the files of the Ontario Provincial Police (the OPP) with respect to criminal charges laid against a named individual. The named individual is a former employee of the appellant's client. She has commenced a civil action against the client for wrongful dismissal.

The Ministry identified the records responsive to the request and denied access to them in their entirety on the basis of the following exemptions in the Act:

- law enforcement - sections 14(1)(a) and (b)
- right to a fair trial - section 14(1)(f)
- solicitor-client privilege - section 19
- invasion of privacy - section 21(1)

The appellant filed an appeal of the Ministry's decision. The appellant clarified that she was not seeking access to "... any information or evidence pertaining to any of the accused involved in the criminal investigation other than [the named individual]."

This office sent a Notice of Inquiry to the appellant and the Ministry. Only the Ministry submitted representations.

## **THE RECORDS**

The Ministry has identified 73 pages of documents as comprising the records responsive to the request.

I have reviewed these pages to determine those which fall within the appellant's clarified request as relating only to the named individual. In this regard, I have removed pages 1, 4-8 and 12-18 from the scope of the appeal. The information on these pages clearly relates to the charges laid against other individuals and the investigations conducted into these charges. In addition, in its representations, the Ministry advised this office that it had forwarded a copy of pages 10-11 to the appellant. Accordingly, these pages are also no longer at issue in this appeal.

The pages remaining at issue consist of an OPP occurrence report, correspondence between the OPP and the Crown, a Crown brief, subpoenas for witnesses, witness statements and information. The information in all of these records relates to the OPP investigation of the named individual and the charges laid against her.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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 all the pages at issue to determine if they contain personal information and, if so, to whom the personal information relates. It is the position of the Ministry that all the records contain the personal information of the named individual and other identifiable individuals as they constitute information relating to the charges and evidence against these individuals. I agree with the Ministry's characterization of the information in the records and find that they all contain the personal information of the named individual and others.

I am mindful that the appellant is seeking access only to that information related to the named individual. However, this information is so intertwined with that of the other people involved in the investigation that it is impossible to separate.

There are certain records which contain references to the president of the appellant's client. However, all these references are to him in his corporate, as opposed to personal, capacity and thus do not constitute his personal information.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

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 submits that all of the personal information falls within the presumption in section 21(3)(b) of the Act, 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;

It is the position of the Ministry that the personal information was compiled by the OPP as part of its investigation into a possible violation of law, namely various provisions of the Criminal Code.

Based on this information, I find that the personal information contained in all the records is subject to the presumption in section 21(3)(b) and is therefore exempt from disclosure pursuant to section 21(1) of the Act.

Because of the way I have dealt with this matter, it is not necessary for me to consider the application of the other exemptions claimed by the Ministry (sections 14(1)(a), (b) and (f) and 19).

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ July 26, 1996