



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

ORDER P-1247

Appeal P-9600153

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to statements taken by the Ontario Provincial Police (the OPP) in the course of their investigation of the appellant's claim that he was detained at a reserve by members of the First Nation band.

The Ministry of the Solicitor General and Correctional Services (the Ministry) gave the appellant access to his own statements, but denied access to the statements of all other individuals under the following section of the Act:

- invasion of privacy - section 49(b).

The appellant appealed the Ministry's decision. This office sent a Notice of Inquiry to the Ministry, the appellant and 40 individuals whose interests could be affected by the outcome of this appeal (the affected persons). Representations were received from the Ministry, the appellant, and a party acting on behalf of the First Nation band and its individual members.

RECORDS:

The records at issue consist of statements, will say summaries, interview reports and interview notes regarding evidence provided to the OPP.

DISCUSSION:

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 records and, in my view, they contain information about the appellant and other identifiable individuals. The appellant does not dispute this issue.

In the course of their investigation, the Police collected information from four band members, two pilots, an OPP Constable, a First Nations Constable, and four employees of the Ministry of Natural Resources. In my view, the pilots, the OPP Constable, the First Nations Constable and the Ministry of Natural Resources employees provided information in their professional capacities, and the records do not contain their personal information, other than their address and date of birth. The statements provided by the band members contain the personal information of the band members and the appellant.

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 49 sets out exceptions to this right.

Where a record contains the personal information of both the appellant and other individuals, section 49(b) of the Act allows the Ministry to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it.

The Ministry and the party representing the band and its members object to disclosure and submit that the information falls within 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.

I am satisfied that the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, disclosure of this information is presumed to be an unjustified invasion of personal privacy. I have highlighted this information on the copy of the parts of the records which are being sent to the Ministry with this order. The parts of the records which are not highlighted in the copy sent to the Ministry do not contain personal information of individuals other than the appellant and should be disclosed to him.

The appellant does not dispute the application of section 21(3)(b) to the records. Rather, he submits that section 21(3)(b) of the Act creates a rebuttable presumption which can be overcome in the particular facts and circumstances of this appeal. He goes on to list a number of factors which he believes support a finding that disclosure in these circumstances would constitute a **justified** invasion of privacy.

Even if I were to find that the factors raised by the appellant were relevant and compelling, the Divisional Court's decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that considerations under section 21(2) cannot be used to rebut the presumptions in section 21(3). Accordingly, the considerations raised by the appellant cannot overcome the application of section 21(3)(b). Section 21(4) of the Act does not apply, and the appellant has not argued that section 23 applies. Accordingly, I find that disclosure of the information would constitute an unjustified invasion of privacy, and section 49(b) of the Act applies.

ORDER:

1. I uphold the Ministry's decision to withhold the statements made by the four band members and the parts of the records which I have highlighted on the copy of the records which is being sent to the Ministry with this order.

2. I order the Ministry to disclose the remaining information to the appellant by sending him a copy by **September 30, 1996**, but not earlier than **September 25, 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.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ August 26, 1996