



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-1225**

**Appeal P-9600204**

**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 copies of all records in its possession concerning a named individual. The requester indicated that she was acting as the agent of the named individual and enclosed a waiver authorizing the release of the requested information to her. The requester advised the Ministry that the named individual had been investigated by the Ontario Provincial Police (the OPP) in 1989 but that no charges had been laid. For ease of reference, in this order I will refer to the named individual as the “appellant”.

The Ministry identified numerous records as being responsive to the request. The Ministry granted partial access to the records, denying access to the balance of the materials under the following exemptions in the Act:

- advice and recommendations - section 13(1)
- law enforcement - sections 14(1)(c), (d) and (g)
- facilitate the commission of an unlawful act - section 14(1)(l)
- law enforcement report - section 14(2)(a)
- solicitor-client privilege - section 19
- invasion of privacy - sections 21(1) and 49(b)
- discretion to refuse requester’s own information - section 49(a)

The appellant filed an appeal of the Ministry’s decision.

During mediation, the appellant substantially narrowed the scope of the appeal to the following pages which may be generally described as follows:

- 4-5, 7-14: portions of the OPP synopsis report summary of statements of individuals interviewed;
- 113-134: letters from academics at various universities;
- 140-141: letter dated February 27, 1989 from counsel for the Attorney General to the OPP;
- 148-149: Ministry Issue sheet dated February 28, 1989;
- 150-152: letter dated February 20, 1989 from counsel for the Attorney General to the OPP;
- 179-181: letter dated February 6, 1989 from a named individual with an enclosure; and
- 203-207, 259-260: portions of a complaint submission prepared by a community group dated January 31, 1989.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties. In its representations, the Ministry indicated that it was withdrawing its reliance on the application of sections 14(1)(c) and (d) of the Act. The records to which the

Ministry had applied sections 14(1)(g) and (l) had previously been eliminated from the scope of the appeal. Accordingly, I will not address these exemptions in this order.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

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 the pages at issue to determine if they contain personal information and, if so, to whom the personal information relates. All of the pages contain the personal information of the appellant in that they consist of the views and/or opinions of various individuals provided to the OPP in the course of their investigation of the complaints made against him. The pages also contain personal information about the individuals who were the source of this information, detailing their backgrounds as well as their views and opinions on general issues.

In his submissions, the appellant has indicated that he is not interested in obtaining the names or identities of any individuals who provided information to the OPP or the Ministry either during the course of their interviews or in written form through correspondence or statements. Where possible, the Ministry has already removed this information from the records. Pages 4-5 and 7-14 have been provided to the appellant in such a format. However, the appellant maintains that more information from these pages should have been disclosed to him.

With respect to the majority of the remaining pages, I find that removing the names and identifiers of those individuals who provided the information to the OPP would not serve to “anonymize” the balance of the information. The information sources could reasonably be identified by the appellant based on the nature of the substantive accusations made against him and the evaluations made of his work. In such circumstances, this information constitutes the personal information of these individuals. Accordingly, I find that all of these pages at issue contain the personal information of the appellant and other identifiable individuals.

The exceptions are pages 148-149. Once the names and identifiers of other individuals are removed, these pages contain only the personal information of the appellant. In these circumstances, disclosure of the remaining information could not constitute an unjustified invasion of the personal privacy of another individual under section 21(1) or 49(b) of the Act. Accordingly, I will analyse these pages under sections 13(1) and 49(a) of the Act.

### **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 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 Ministry 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.

The Ministry submits that the personal information is subject to 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;

The Ministry states that in February 1989, the OPP commenced a criminal investigation as a result of two complaints received from the Office of the Director of Crown Attorneys of the Ministry of the Attorney General. The complaints stated that a paper released by the appellant had possibly violated the hate sections of the Criminal Code. The investigation was conducted and the personal information compiled to determine possible violations of these sections of the Criminal Code.

Based on this information, I find that the personal information contained in all the records with the exception of pages 148-149 is subject to the presumption in section 21(3)(b) of the Act. The presumption may still apply, even if, as in the present case, no charges were laid (Orders P-223 and P-237). Thus the personal information is exempt pursuant to section 49(b) of the Act.

#### **ADVICE TO GOVERNMENT/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION**

Another exception to a requester's right of access to his own personal information under section 47(1) is section 49(a) which states:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, **13**, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;

In this order, I have found that the responsive portions of pages 148-149 contain only the personal information of the appellant. The Ministry claims that these pages qualify for exemption pursuant to section 13(1) of the Act which states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as “advice” or “recommendations”, the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

Page 148 is entitled “Confidential Issue Sheet”. It was prepared by an OPP Superintendent proposing a response for the Solicitor General if he was asked certain questions about an investigation concerning complaints against the appellant. Page 149 consists of a photocopy of two “Action Memos” with some handwritten comments. Although the Ministry submits that these pages are “... clearly identifiable as draft correspondence”, there is nothing on the face of the documents themselves or any other information before me to identify them as “drafts”. Nor, based on the nature of the record itself, is it clear that page 148 can be characterized as “correspondence”.

The Ministry also submits that the records detail a suggested course of action with respect to the investigation of the appellant. Finally, the Ministry claims that the “Response” section of page 148 contains advice provided to the Solicitor General.

With respect to this portion of page 148, I find that it does not contain any information which relates to a suggested course of action which the Solicitor General might either accept or reject as part of the investigatory process in this case. In addition, the contents of this section are purely factual in nature.

As far as page 149 is concerned, I find that it does not contain any suggestions regarding the course of action to be taken with respect to the investigation of the appellant. In my view, the most that can be said about one of the action memos is that it contains a comment with respect to the work and time the investigation will assume.

Accordingly, I find that the exemption in section 13(1) does not apply to pages 148-149. Therefore, they are not exempt pursuant to section 49(a) of the Act. As the Ministry has not claimed that any other exemptions apply to these pages, and no mandatory exemptions apply,

they should be disclosed to the appellant. I have highlighted the personal information of the other individuals which is not at issue on the copies of these pages which I have forwarded to the Freedom of Information and Privacy Co-ordinator of the Ministry with a copy of this order.

Because of the manner in which I have dealt with these issues, it is not necessary for me to consider the application of sections 14(2)(a) and 19 of the Act.

**ORDER:**

1. I uphold the decision of the Ministry not to disclose pages 4-5, 7-14, 113-134, 140-141, 150-152, 179-181, 203-207, 259-260 and the highlighted portions of pages 148-149 which I have forwarded to the Freedom of Information and Privacy Co-ordinator of the Ministry with a copy of this order.
2. I order the Ministry to disclose the non-highlighted portions of pages 148-149 to the appellant by sending him a copy by **August 6, 1996**.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the pages disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_ July 15, 1996  
Anita Fineberg  
Inquiry Officer