



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

# **ORDER P-1250**

**Appeal P-9600205**

**Ministry of the Attorney General**



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 requested information from the Ministry of the Attorney General (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). This information relates to the contents of two complaint files in the office of the Police Complaints Commissioner (the PCC). These files pertain to complaints made by the appellant against named officers of the Barrie Police Service (the Police) and the Ontario Provincial Police (the OPP).

The Ministry located a number of records responsive to the request and determined that the Police had a greater interest in 41 pages of the records. The Ministry transferred this portion of the request to the Police. The appellant did not object to the transfer, and the Ministry confirms that the Police have responded to this portion of the request.

The Ministry provided the appellant with partial access to the remaining records and attached a copy of its document control list (index of records) which details the exemptions claimed for the records to which access was denied. The Ministry relies on the following provisions of the Act to deny access to nine pages:

- advice and recommendations - section 13(1) (pages 5, 6 and 7)
- law enforcement - sections 14(1)(a), (c) and 14(2)(a) (pages 1, 5, 6, 7, 12, 17, 40, 41 and 51)
- invasion of privacy - section 49(b) (pages 40, 41 and 51)
- discretion to refuse requester's own information - section 49(a) (pages 1, 5, 6, 7, 12, 17, 40, 41 and 51).

The appellant appealed the Ministry's decision to deny access to these nine records. During mediation, the Ministry disclosed pages 5, 6, and 7 in full. These records are no longer at issue and, since section 13(1) was only claimed for these records, this exemption is no longer at issue.

This office sent a Notice of Inquiry to the Ministry and the appellant. Both parties made representations in response to the Notice.

The records at issue consist of file monitoring logs (pages 1 and 17), a letter from the Police to the PCC (page 12), a two page duty report of a named OPP officer (pages 40 and 41) and a memorandum from the Public Complaints Bureau to the named OPP officer (page 51).

## **PRELIMINARY MATTERS:**

### **LATE RAISING OF DISCRETIONARY EXEMPTION**

Upon receipt of the appeal, this office provided the Ministry with a Confirmation of Appeal notice. This notice indicated that the Ministry had 35 days from the date of the notice to raise additional discretionary exemptions not claimed in the decision letter. No additional exemptions were raised during this period.

Subsequently, in its representations dated August 2, 1996, the Ministry claims that, in the alternative to a finding under section 14, the exemption in section 13(1) applies to page 12 of the records. The deadline for raising additional discretionary exemptions had expired on June 20,

1996. I note that in its decision letter to the appellant and on the document control list, the Ministry made it very clear that it was only relying on section 13(1) to exempt pages 5, 6 and 7 from disclosure.

It has been determined in previous orders that the Commissioner has the power to control the process by which the inquiry is undertaken (Orders P-345 and P-537). This includes the authority to set time limits for the receipt of representations and to limit the time during which an institution can raise new discretionary exemptions not claimed in its original decision letter.

The Ministry has not made any submissions as to why this exemption was not raised with respect to page 12 at an earlier stage in the appeal.

In Order P-685, Inquiry Officer Anita Fineberg concluded that in cases where a discretionary exemption is claimed late in the appeals process, a decision-maker has the authority to decline to consider the discretionary exemption. I agree with Inquiry Officer Fineberg's reasoning and adopt it for the purposes of this appeal.

In the circumstances of this appeal, I am not persuaded that a departure from the 35-day time frame is justified. Accordingly, I decline to consider the application of section 13(1) to page 12.

### **ADDITIONAL RECORDS**

In his representations, the appellant refers to a number of documents which he believes should exist and to which he would like access. The appellant did not indicate in his letter of appeal, nor at any time during the mediation stage of this appeal, that the existence of more records was at issue.

In my view, the above discussion is similarly applicable to the late raising of an issue in the appeal by the appellant. The existence of more records was not initially included within the scope of the appeal as identified by the appellant. To allow the appellant to raise this issue at this late stage in the process would unnecessarily delay the final disposition of this matter. Moreover, the appellant is not precluded from filing a new request with the Ministry for the specific records he seeks. Therefore, I will not consider this issue further.

### **DISCUSSION:**

#### **PERSONAL INFORMATION**

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 information contained in each of the records and find that it relates to the appellant.

The Ministry submits that pages 40, 41 and 51 also contain the personal information of a named OPP officer (who was the subject of a complaint made by the appellant), the Co-ordinator of the Public Complaints Bureau, Professional Standards Branch of the OPP (the Co-ordinator), and five other identifiable individuals.

The name of the Co-ordinator on page 51 appears in the context of this individual's professional responsibility and as such, does not qualify as personal information. I agree, however, that these three pages contain the personal information of the other individuals referred to above as well as that of the appellant.

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.

## INVASION OF PRIVACY

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 Ministry has the discretion to deny the requester access to that information. In this situation, the requester is not required to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 49(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

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.

Pages 40 and 41 are a two-page duty report of a named OPP officer, and page 51 is a memorandum from the Public Complaints Bureau to the named OPP officer.

With respect to page 51, the Ministry indicates that this page contains the name and badge number of the officer about whom the appellant made his complaint, and that this record was generated at the beginning of the public complaints process. This memorandum simply notifies the officer about the complaint, and was sent to him at the Detachment office. Both the name and badge number are known to the appellant, and are, in fact, contained in other documents which have been disclosed to him in response to this access request. In my view, disclosure of this page would not constitute an unjustified invasion of the officer's personal privacy in the circumstances of this appeal.

The Ministry submits that disclosure of the duty report, which provides an account of the OPP officer's contact with the appellant, would be a presumed unjustified invasion of privacy pursuant to section 21(3)(b), 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.

Many previous orders have held that a public complaint investigation is a law enforcement investigation since such an investigation can lead to charges against the subject officer, and a hearing before a board of inquiry under the Police Services Act (Orders P-932 and M-757). I agree, and find that pages 40 and 41 were compiled and are identifiable as part of an investigation into a possible violation of law, that is, an alleged breach of the Police Services Act. Accordingly, I find that the personal information in these pages is subject to the presumption in section 21(3)(b) of the Act.

The personal information in pages 40 and 41 does not fall within the ambit of section 21(4). Nor has the appellant maintained that there is a public interest in the disclosure of this information under section 23 of the Act. Accordingly, I find that pages 40 and 41 are exempt under section 49(b).

#### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION**

As I indicated above, all of the records contain the appellant's personal information. Under section 49(a) of the Act, the Ministry has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. Section 49(a) states as follows:

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. (emphasis added)

In order to determine whether the exemption provided by section 49(a) applies to the records, I will begin by considering the Ministry's claim that it qualifies for exemption under section 14, which is referred to in section 49(a).

#### **LAW ENFORCEMENT**

The Ministry claims that the records are all exempt under section 14(2)(a). I have already found that pages 40 and 41 are exempt under section 49(b) and, accordingly, will not consider them in this discussion.

Section 14(2)(a) provides:

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.

Pages 1 and 17 contain a running log of actions taken in processing the complaint file. Page 12 is a covering letter which contains observations of the author regarding administrative issues in connection with the procedures of the PCC. As I indicated above, page 51 is a memorandum which notifies the named OPP officer that a complaint has been made. In reviewing these records, I find that none of them contain a formal account of the results of the collation and consideration of information (Order 200). Accordingly, I find that none of these pages qualify as a "report" within the meaning of section 14(2)(a), and they are, therefore, not exempt under this section. As no other exemptions have been claimed for page 51, this page should be disclosed to the appellant.

The Ministry claims that section 14(1)(a) applies to pages 1, 12 and 17 and that section 14(1)(c) also applies to page 12. These sections provide that:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement.

In order for a record to qualify for exemption under either of these sections, the matter to which the record relates must first satisfy the definition of "law enforcement" found in section 2(1) of the Act. The records relate to the complaints made by the appellant and the subsequent investigation of them. I am satisfied that the records relate to a law enforcement matter.

However, the Ministry's representations are very vague concerning these two exemption claims. It provides a brief overview of the mandate of the PCC and the role of the OPP. However, the Ministry is silent as to how disclosure of the information in pages 1, 12 and 17 could reasonably be expected to result in either of the harms referred to in sections 14(1)(a) or (c). In reviewing the records, I find nothing in them which would indicate that their disclosure could reasonably be expected to result in either harm. Therefore, I find that none of the records qualify for exemption under section 14(1)(a) or (c). As no other exemptions have been claimed for these pages, they should be disclosed to the appellant.

As the records do not qualify for exemption under section 14, section 49(a) does not apply.

## **ORDER:**

1. I uphold the Ministry's decision to withhold pages 40 and 41 from disclosure.

2. I order the Ministry to disclose pages 1, 12, 17 and 51 in their entirety to the appellant by sending him a copy of these pages on or before **September 17, 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 records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_

Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ August 28, 1996