



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

ORDER P-1307

Appeal P_9600292

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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

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 access to a complete copy of the police file, including police officers' notes and witness statements, relating to a specific incident. The requester represents an individual who suffered injuries as a result of the incident and who is the respondent in a civil suit.

The Ministry granted partial access to the police officer's notes. The Ministry denied access to the witness statements in their entirety and to parts of the police officer's notes on the basis of sections 14(1)(l) and 49(a) (law enforcement) and sections 21(2)(f), 21(3)(b) and 49(b) (invasion of privacy) of the Act. The Ministry indicated that access was also denied to those parts of the police notes which contained information not relevant to the request. The requester appealed the decision to deny access.

During mediation, the appellant agreed that the portions of the record which the Ministry had identified as being not relevant to the request were not at issue. In addition, the appellant confirmed that he was not seeking access to the portions of the record which contained police codes and for which the Ministry had claimed section 14(1)(l). The Ministry advised that it had claimed this exemption only for police codes and accordingly, I need not consider the application of sections 14(1)(l) and 49(a) of the Act.

As part of mediation efforts, the Appeals Officer contacted all witnesses to see if they would consent to the disclosure of their witness statements. Four witnesses consented to disclosure and the Ministry issued a supplementary decision letter, disclosing the four witness statements to the appellant.

The record that remains at issue consists of 17 pages from a police officer's notebook and a three-page incident synopsis (withheld in part) together with 27 pages of witness statements (withheld in full).

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties.

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 in the record and I find that the record contains the personal information of the appellant and other identifiable individuals, including the witnesses.

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 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 appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to his or her own personal information, the only situation under section 49(b) in which he or 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 personal privacy.

Sections 21(1), (3) and (4) of the Act provide guidance in determining whether the 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 Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant to the appeal.

The appellant states that the incident has significantly impacted on his client's life, and his client has a right to know all the information surrounding and leading up to the incident. The appellant has also indicated that he is representing his client in a civil suit. In this manner, the appellant has indirectly raised the possible application of section 21(2)(d) (fair determination of rights) which factor weighs in favour of disclosure of the personal information.

The Ministry submits that the presumption in section 21(3)(b) applies to all the information in the record as it was compiled and is identifiable as part of an investigation into a possible violation of the Criminal Code and that the disclosure of this information would result in the presumed unjustified invasion of the personal privacy of identifiable individuals other than the appellant. The Ministry submits that section 21(2)(f) is also relevant to the protection of the record from disclosure as it contains "highly sensitive" personal information.

I have carefully reviewed the record and I find that the presumption provided by section 21(3)(b) of the Act applies to the personal information in the record. I find that the personal information in the severed portions of the police officer's notes, the three-page synopsis and the witness statements was compiled and is identifiable as part of an investigation into a possible violation of law. As I have indicated previously, once a presumption is found to apply, the only way in which it can be rebutted is if it falls under section 21(4) or where section 23 is found to apply.

This result is dictated by the findings of the Divisional Court in John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767. Consequently, the application of section 21(2)(d) raised by the appellant could not override or rebut the presumption I have found to apply. I further find that sections 21(4) and 23 have no application in the circumstances of this appeal. Accordingly, the record is exempt under section 49(b) of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ November 27, 1996