



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

ORDER P-1338

Appeal P_9600309

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>

BACKGROUND:

The appellant is a former employee of a non-profit housing corporation (the Corporation). He was suspected of misusing funds of the Corporation when an audit revealed financial irregularities. As a result of allegations concerning the activities of the appellant, the Ontario Provincial Police (the OPP) undertook a fraud investigation.

The OPP investigation and audit did not find evidence of a criminal offence having been committed and the matter did not proceed further. The appellant has filed wrongful dismissal action against the Corporation.

NATURE OF THE APPEAL:

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General and Correctional Services (the Ministry) for access to all documentation related to the above-described OPP investigation.

Pursuant to section 28 of the Act, the Ministry notified the Board of Directors of the Corporation and six individuals whose interests may be affected by disclosure of the information contained in the records. Four of these individuals consented to the partial disclosure of their information contained in the records.

The Ministry subsequently issued a decision in which it released some of the information to the appellant and denied access to the remainder, either in whole or in part, on the basis of the following exemptions contained in the Act:

- law enforcement - sections 14(1)(d) and 14(2)(a)
- third party information - section 17
- solicitor-client privilege - section 19
- invasion of privacy - section 49(b)
- discretion to refuse access to requester's own information - section 49(a)

The appellant filed an appeal of this decision.

During mediation, the appellant considerably narrowed the scope of the request. He indicated that he was not interested in receiving access to Records 45-65, 101 and 138. Nor was he seeking access to the birth dates, addresses, telephone numbers, places of work or the identity of the house mates of any individuals named in the records. In Records 9-10 and 95-97, the appellant is seeking access to only the names of the "Involved Persons" who have not consented to the disclosure of their information. Those portions of the records which the Ministry has identified as non-responsive are also not at issue in this appeal.

A Notice of Inquiry was sent to the Ministry, the appellant and six affected parties, including the Board of Directors of the Corporation. Attached to the Notices was an Index of Records setting

out the numbers, description and exemptions claimed by the Ministry to deny access to the records remaining at issue. I have attached a copy of this Index to this order as Appendix "A". Representations in response to the Notices were received from the Ministry and counsel representing both the Board of Directors of the Corporation and one of the individual affected parties.

In its submissions, the Ministry indicated that it was providing submissions on only the application of section 49(b) of the Act. Sections 17 and 49(a) were the only exemptions the Ministry had claimed with respect to Records 93, 136-137 and 139-142. Because section 17 is a mandatory exemption, I have independently reviewed these records and determined that this exemption does not apply. However, portions of these documents contain references to named individuals. Accordingly I will consider Records 93, 136-137 and 139-142 in my discussion of "Invasion of Privacy" which follows.

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.

I have reviewed all the records at issue to determine if they contain personal information and, if so, to whom that personal information relates.

All of the records contain the personal information of the appellant who was the subject of the OPP investigation. In addition, with the exception of Records 26 and 136-137, they all contain the personal information of one or more of the affected parties. In those cases where other individuals are not identified by name, it is my opinion that there is a reasonable expectation that their identities can be determined because of the nature of the information contained in the records.

Records 26 and 136-137 contain only the personal information of the appellant and should be disclosed to him in full now that the Ministry is not claiming any other exemptions for this information.

Records 139-140 contain references to an individual retained to audit the books of the Corporation. As such, I find that the information related to her is not her personal information as she was functioning in her professional capacity. Record 139 should be disclosed in full to 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 institution 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.

Sections 21(2), (3) and (4) provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. 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. If none of the presumptions in section 21(3) apply, the institution must consider the factors listed in section 21(2), as well as all other relevant circumstances.

The Ministry claims that disclosure of the personal information would result in a presumed unjustified invasion of personal privacy under section 21(3)(b) of the Act. It states that the information was compiled as part of the OPP investigation into alleged violations of the Criminal Code for theft and falsification of books and documents. Furthermore, the Ministry correctly notes that previous orders have indicated that because the presumption applies to investigations into a "**possible** violation of law", there is no need for criminal charges to have been laid or for proceedings to have been commenced in order for the presumption to apply (M-395 and P-613). Accordingly, even though this matter did not proceed beyond the OPP investigation, I find that the personal information is subject to the presumption in section 21(3)(b).

Section 21(4) does not apply in the circumstances of this case and the appellant has not argued that there is a compelling public interest in disclosure of this personal information pursuant to section 23 of the Act. Therefore, section 49(b) applies to exempt the information from disclosure.

In most instances, the personal information of the appellant is so intertwined with that of other individuals that it is not possible to remove the information of the other individuals and provide the appellant with access to his own personal information. However, certain records may be severed in such a way that their disclosure would not result in an unjustified invasion of the personal privacy of the affected parties. These are Records 27, 93, 99, 103, 106, 113 and 140_142. I have provided highlighted copies of these records to the Freedom of Information and Privacy Co-ordinator of the Ministry with a copy of this order. The portions highlighted in yellow should not be disclosed.

ORDER:

1. I order the Ministry to disclose Records 26, 136-137 and 139 to the appellant in their entirety.
2. I order the Ministry to disclose to the appellant the **non-highlighted** portions of Records 27, 93, 99, 103, 106, 113 and 140-142 which I have provided to the Ministry's Freedom of Information and Privacy Co-ordinator.
3. I order the Ministry to disclose the records described in Provisions 1 and 2 to the appellant by **March 11, 1997** but not before **March 6, 1997**.

4. I uphold the decision of the Ministry to deny access to the balance of the records at issue in this appeal.
5. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with copies of the records which are disclosed in accordance with Provisions 1 and 2 of this order.

Original signed by: _____
Anita Fineberg
Inquiry Officer

February 4, 1997

APPENDIX "A"

INDEX OF RECORDS - RECORDS DENIED IN FULL

RECORD NUMBER	DESCRIPTION	EXEMPTION CLAIMED	DECISION ON RECORD
21-25	Witness Statement	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h) , 21(3)(b)	Do not disclose
26	Questions for Witness	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Disclose in full
27	Investigator's Note	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Disclose in part
28-44	Witness' Notes	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Do not disclose
74-77, 78-81	Witness Statement and Attachments	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Do not disclose
93	OPP Property Release Form	49(a), 17	Disclose in part
104, 107-111, 114, 116-118, 127-128, 134	Investigator's Notes	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Do not disclose
135	Investigator's Notes	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Do not disclose
136-137, 139- 142	Investigator's Notes	49(a), 17	Disclose in full: 137-137, 139 Disclose in part: 140-142

INDEX OF RECORDS - RECORDS DENIED IN PART (SEVERED)

RECORD NUMBER	DESCRIPTION	EXEMPTIONS CLAIMED	DECISION ON RECORD
2-4	General Occurrence Report	49(a) and (b), 14(1)(d), 14(2)a, 21(2)(h), 21(3)(b)	Do not disclose
8-10	Supplementary Report	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Do not disclose
14-15	General Occurrence Report	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Do not disclose
95-97	Investigator's Notes - List of Persons Involved	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Do not disclose
99-100, 102-103, 105-106, 112 -113, 115, 119, 123-126, 129, 132 and 134	Investigator's Notes	49(a) and (b), 14(1)(d), 14(2)(a), 21(2)(h), 21(3)(b)	Disclose in part: 99, 103, 106, 113 Do not disclose: 100, 102, 105, 112, 115, 119, 123-126, 129, 132, 134