



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

ORDER P-1282

Appeal P-9600188

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 access to the investigating police officer's notes and the statements of any individuals interviewed in relation to a snowmobile accident. The requester is a law firm representing an insurance company and the driver of the snowmobile (the snowmobile driver) that hit an individual.

The Ministry located records responsive to the request and determined that the interests of two other individuals who were also involved in the accident could be affected by disclosure of the information (the affected persons). The Ministry notified the affected persons, both of whom objected to the release of the information requested.

The Ministry granted access in full to the Motor Vehicle Accident Report and one page of the police officer's notebook. The Ministry denied access to a witness report and portions of four pages of the police officer's notebook on the basis that disclosure would constitute an unjustified invasion of personal privacy under section 21(1) of the Act. The Ministry also withheld those portions of the police officer's notebook which were not responsive to the request. The requester appealed the denial of access.

During mediation, the appellant confirmed that information severed from the records which was not responsive to the request would not be at issue in the appeal. This information consists of police codes and information pertaining to police officers and I agree that it is not responsive to the request.

This office provided a Notice of Inquiry to the appellant, the Ministry, and the two affected persons. As some of the records at issue may contain personal information relating to the driver of the snowmobile, the parties were asked to provide representations on section 49(b) of the Act. Representations were received from the appellant and the Ministry.

The records at issue consist of a witness statement and the severed portions of four pages from the police officer's notebook.

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 the information in the records and I find that it contains the personal information of the snowmobile driver and other identifiable individuals, including the affected persons.

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, it 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 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 listed 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 all of the exempted information was compiled and is identifiable as part of an Ontario Provincial Police (OPP) investigation into a possible violation of law, namely the Criminal Code or the Motorized Snow Vehicles Act. The Ministry also states that the police officer's notes contain several references to the injuries suffered by an individual involved in the accident. On this basis, the Ministry submits that the presumptions in sections 21(3)(a) and (b) apply. These sections state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) 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.

In addition, the Ministry states that the information is highly sensitive given that, as a result of the accident, a civil action is currently pending. On this basis the Ministry states that section 21(2)(f) also applies to the information at issue.

The appellant relies on section 21(3)(b) in support of disclosure. She advises that disclosure is necessary for the law firm and its clients to continue their investigation and rebut any liability on the part of their clients.

The appellant submits that their clients are being sued by one of the affected persons and disclosure of the information is necessary in order to defend the claims against them. On this basis, the appellant states that section 21(2)(d) also applies to the information at issue.

I have reviewed the information in the records together with the representations of the Ministry and the appellant. I am satisfied that the personal information was "compiled and is identifiable

as part of an investigation into a possible violation of law” (the Criminal Code) and therefore, it meets the requirements of section 21(3)(b). Accordingly, I find that this presumption applies.

With respect to the appellant’s view that disclosure is necessary in order that they can continue their investigation, the exception described in section 21(3)(b) refers to an investigation by a law enforcement agency and is not intended, as the appellant asserts, to assist in an investigation being undertaken by a requester (Order P-1153).

As noted above, the only way such a presumption can be rebutted is if sections 21(4) or 23 apply. Even if I were to find that section 21(2)(d) was relevant in the circumstances of this appeal, the Divisional Court’s decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that the factors and considerations in section 21(2) cannot be used to rebut the presumptions in section 21(3).

The information in the records is not information of the type described in section 21(4) and the appellant has not claimed the possible application of section 23. Accordingly, I find that sections 21(4) and 23 are not applicable and I find that disclosure of the records would constitute an unjustified invasion of personal privacy under section 49(b) of the Act.

ORDER:

I uphold the Ministry’s decision.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

October 24, 1996 _____