



Information and Privacy
Commissioner/Ontario

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

ORDER P-1421

Appeal P_9700116

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>

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). The request was for a copy of a report prepared by the Ontario Provincial Police (the OPP) following its investigation into allegations of fraud and corruption made by the requester and several other individuals against officials with the City of Elliott Lake. After completing the investigation, the OPP provided the complainants, including the appellant, with a detailed explanation of their findings, including the reasons for their decision that no further investigation of the allegations was warranted.

The Ministry located the responsive record, a one-page General Occurrence Report to which was attached an eleven-page Supplementary Report. The written explanation provided to the appellant contains much the same information as the requested record. The Ministry denied access to the record claiming the application of the following exemptions contained in the Act:

- law enforcement - section 14(2)(a)
- third party information - section 17(1)
- 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 requester, now the appellant, appealed the Ministry's decision. A Notice of Inquiry was provided by this office to the appellant and the Ministry. Representations were received from both parties. In its submissions, the Ministry advised that it was no longer relying on either the mandatory exemption provided by section 17(1) or the discretionary exemption in section 19. I have reviewed the information contained in the record and find that none of it qualifies as the type of third party information contemplated by the mandatory exemption in section 17(1). I will not, therefore, consider the application of these exemptions to the record.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual. I have reviewed the record and find that it contains the personal information of the appellant and a number of other identifiable individuals. In addition, the record refers to certain persons in their professional or employment capacities and, as such, this information does not qualify as the personal information of these individuals.

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 Ministry 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 states that the personal information contained in the record was compiled as part of an OPP investigation into a potential violation of law, the commission of a criminal offence by the individuals named by the complainants. Accordingly, the Ministry argues that the presumption in section 21(3)(b) applies to exempt this information from disclosure. This section provides:

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.

Based on the submissions of the Ministry and my review of the records, I find that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, the Criminal Code. In addition, I find that the exceptions contained in section 21(4) have no application in the present appeal. The appellant has not claimed the application of section 23. As I have found that the presumption in section 21(3)(b) applies, the disclosure of the information contained in the record would constitute an unjustified invasion of the personal privacy of the affected persons and the record is properly exempt under section 49(b).

Because of the manner in which I have addressed the application of the invasion of personal privacy exemption in section 49(b), it is not necessary for me to address the possible application of sections 14(2)(a) and 49(a).

ORDER:

I uphold the Ministry's decision to deny access to the records.

Original signed by: _____ July 9, 1997
Donald Hale
Inquiry Officer