



Information and Privacy
Commissioner/Ontario

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

ORDER P-1428

Appeal P_9700044

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

NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the requester's file with the Office of the Police Complaints Commissioner (the PCC). The request relates to the requester's complaint to the PCC about the conduct of two police officers. The Ministry's search for responsive records indicated that the Peel Regional Police Services Board (the Police) had a greater interest in 43 pages forming part of the record. The Ministry transferred this part of the request to the Police, pursuant to sections 25(2) and (3) of the Act.

The Ministry granted access to 137 pages of the record. Access was denied to the remaining 36 pages on the basis of sections 14(2)(a) (law enforcement report) and 49(a) (discretion to refuse requester's own information) and section 49(b) (invasion of privacy). In a supplementary decision letter, the Ministry also claimed sections 14(2)(c) (exposure to civil liability), 15(b) (relations with other governments), 17(2) (tax return information) and 21(1)(a) (consent to disclosure). The requester appealed the decisions to deny access and the decision to transfer part of the request.

This office provided a Notice of Inquiry to the requester (now the appellant), the Ministry and three police officers referred to in the record (the affected persons). Representations were received from the Ministry only. I will address the issue of the transfer of part of the request to the Police as a preliminary matter.

In this order, I will refer to the record by the page numbers used by the Ministry in its Document Control List. Page 130 contains two action memos which have been photocopied, by the Ministry, onto one page. In my view, the two memos are separate documents and while they appear on one page, I will treat them as two separate parts of the record.

In its representations, the Ministry indicates that it is no longer relying on the exemptions claimed in sections 14(2)(a) and (c) and 49(a) to withhold access to pages 65-72, page 126, the top half of page 130 and page 158. The Ministry submits that pages 65-72 (being Crown Brief documents) were provided to the PCC by the appellant and, on this basis, the Ministry is prepared to disclose them to the appellant. The Ministry states that it is also prepared to disclose page 126 (facsimile cover sheet), the top half of page 130 (action memo of a telephone conversation with the appellant) and page 158 (handwritten notes of a telephone conversation with the appellant).

I have reviewed the information in the pages and find that page 126 does not contain any personal information and that pages 65-72, 158 and the top half of page 130 contain the personal information of the appellant only. No other discretionary exemptions have been claimed by the Ministry for these pages and no mandatory exemptions apply. As indicated above, the Ministry is prepared to disclose these parts of the record to the appellant but has not done so yet. I will therefore order the Ministry to disclose these pages to the appellant in the order provisions below.

Accordingly, the pages that remain at issue consist of pages 20, 86, 90, 92, 94, 95, 99, 100, 104_106, 127, 130 (being the bottom half or the remaining part of the page), 159, 160, 162, 166, 167 and 168-173, which the Ministry has withheld under sections 14(2)(a), (c) and 49(a). Pages 124 and 125 are also at issue, withheld under sections 15(b) and 17(2) of the Act.

I note that pages 95, 99 and 166 are duplicate copies of pages 86, 90 and 127. Therefore, I will not consider the application of the exemptions to pages 95, 99 and 166 and my findings on pages 86, 90 and 127 will apply equally to the duplicates.

PRELIMINARY MATTER:

TRANSFER OF PART OF THE REQUEST

In its initial decision, the Ministry advised the appellant that 43 pages of the record responsive to the request were created by the Police. The Ministry forwarded these pages to the Police, pursuant to sections 25(2) and (3) of the Act for processing, as it determined that they had a greater interest in that part of the record.

Sections 25(2) and (3) state:

- (2) Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.
- (3) For the purpose of section (2), another institution has a greater interest in a record than the institution that received the request for access if,
 - (a) the record was originally produced in or for the other institution; or
 - (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.

In its representations, the Ministry states that the transferred pages of the record consist of the PCC complaint form, witness statement, Use of Force Report, Prisoner Log, Final Report, letter to the appellant, internal correspondence and police officer's notes and were originally created and produced by the Police.

Previous orders of the Commissioner have determined that regardless of whether an institution has custody or control of the record, another institution can have a "greater interest" in that record, if it was the institution that originally produced the record or the institution for which the record was originally produced (Orders P-279 and P-902).

In the circumstances of this appeal, I accept the representations of the Ministry and I find that the transfer of part of the request was properly done in accordance with sections 25(2) and (3) of the Act.

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 the record and I find that pages 20, 86, 127, 159, 160 and 167 do not contain any personal information. I find that pages 90, 92, 94, 100, 104-106, 124-125, 162 and 168-173 contain the personal information of the appellant only. In these pages, the references to various individuals does not constitute their “personal information” as this information relates to individuals acting in their professional or employment capacity.

Finally, I find that the remaining portion of page 130 contains the personal information of an identifiable individual other than the appellant.

DISCRETION TO REFUSE ACCESS TO REQUESTER’S OWN INFORMATION

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution. I have previously found that pages 90, 92, 94, 100, 104-106, 124-125, 162 and 168-173 contain the appellant’s personal information. However, section 49 sets out exceptions to this right of access.

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, including sections 14(2)(a) and (c) and sections 15(b) and 17(2) would otherwise apply to that information. The Ministry has claimed that section 14(2)(a) applies to the pages listed above. The Ministry claims that section 14(2)(c) also applies to pages 90, 92, 99 and 104 and sections 15(b) and 17(2) apply to pages 124 and 125.

LAW ENFORCEMENT

I will first consider the application of sections 14(2)(a) and (c), which state:

A head may refuse to disclose a record,

- (a) 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;
- (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record

or any person who has been quoted or paraphrased in the record to civil liability.

For a record to qualify for exemption under section 14(2)(a) of the Act, the institution must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Order 200]

Previous orders of the Commissioner have determined that the PCC is an agency which has the function of enforcing and regulating compliance with a law and that records prepared in the course of an investigation or inquiry by the PCC relate to a “law enforcement” matter (Order P_659). I agree with the finding and adopt it for the purposes of this appeal. Therefore, I find that the record was prepared by the PCC during its investigation into a law enforcement matter.

The term “report” is not defined in the Act. Based on previous orders, however, for a record to be a report, it must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

I have carefully reviewed the pages at issue and the representations of the Ministry. I find that the parts of the record for which section 14(2)(a) is claimed consist of letters, memoranda, handwritten notes, facsimile cover sheets and the investigation log. While I accept that these documents were prepared in the course of an investigation into a law enforcement matter, I am not satisfied that these are “reports” or part of a “report” for the purposes of section 14(2)(a) of the Act. I find therefore that pages 20, 86, 90, 92, 94, 99, 100, 104-106, 127, 159, 160, 162, 167 and 168-173 are not exempt under section 14(1)(a) and section 49(a) does not apply.

The Ministry has raised the application of section 14(2)(c) to pages 90, 92, 99 and 104. The Ministry has not provided any representations on the application of this section. As this is a discretionary exemption, I find that the Ministry has abandoned its claim that this exemption applies to these pages. Accordingly, the Ministry has also abandoned its claim under section 49(a).

I will now consider the application of section 15(b) to pages 124 and 125.

RELATIONS WITH OTHER GOVERNMENTS

For a record to qualify under this section, the Ministry must establish that:

1. the record reveals information received from another government or its agencies; **and**
2. the information was received by an institution; **and**
3. the information was received in confidence.

[Order 210]

Pages 124 and 125 consist of part of the appellant's tax return. The Ministry states that it does not know who provided these pages to the PCC and that section 15(b) is being claimed in the event that the pages were not provided by the appellant.

I have not been provided with evidence that the information in the record was received from another government or its agency by the Ministry and that it was received in confidence. Therefore, I find that the exemptions in sections 15(b) and 49(a) do not apply.

The Ministry has also claimed section 17(2) for these two pages, which I will consider below.

TAX RETURN INFORMATION

Section 17(2) of the Act reads as follows:

A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

I have reviewed the pages at issue. Pages 124 and 125 form part of a tax return and contain information that was gathered for the purpose of determining tax liability. I find therefore that the mandatory exemption provided by section 17(2) of the Act applies.

However, section 17(3) provides the head of an institution with the discretion to disclose a record otherwise exempt from disclosure under certain circumstances. This section reads as follows:

A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure.

In the present case, the parts of the tax return at issue clearly relate to the appellant, who is seeking access. In my view, this constitutes consent of the person to whom the information relates and pages 124 and 125 should be disclosed to the appellant.

I find therefore that pages 124 and 125 are not exempt under section 17(2) and section 49(a) does not apply.

INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in this section applies.

The Ministry submits that pages 106, 159-160, 166-167 and 168-173 contain the personal information of an identifiable individual other than an appellant and refers to the exception in section 21(1)(a). However, I have previously found that pages 159-160 and 167 do not contain any personal information and that page 127, which is a duplicate copy of page 166, does not contain personal information. I have also found that pages 106 and 168-173 contain the personal information of the appellant only. Therefore, I do not agree with the Ministry's position.

However, I have previously found that the remaining part of page 130 contains the personal information of an individual other than the appellant. This information consists of the individual's name and telephone number. The Ministry submits that the individual is not a member of the PCC staff. In my view, the only exception which might apply to permit disclosure of this information is section 21(1)(f), which permits disclosure if it "does not constitute an unjustified invasion of personal privacy".

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 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 relevant circumstances in the case.

In the circumstances of this appeal, I have not been provided with any evidence that disclosure of the personal information at issue would not constitute an unjustified invasion of privacy of the individual to whom the personal information relates. Therefore, I find that disclosure of this information would constitute an unjustified invasion of the personal privacy of the individual named therein and the exception in section 21(1)(f) does not apply.

SUMMARY OF FINDINGS:

In summary, I have found as follows:

- (1) section 14(2)(a) does not apply to pages 20, 86, 90, 92, 94, 99, 100, 104-106, 127, 159, 160, 162, 167 and 168-173;
- (2) section 14(2)(c) does not apply to pages 90, 92, 94, 99 and 104;
- (3) section 15(b) does not apply to pages 124 and 125;
- (4) section 17(2) of the Act does not apply by virtue of section 17(3);

- (5) accordingly, section 49(a) is not applicable;
- (6) section 21(1)(f) does not apply and the bottom half of page 130 is exempt from disclosure.

Accordingly, all the pages at issue in this appeal with the exception of part of page 130 must be disclosed to the appellant.

ORDER:

- 1. I uphold the Ministry's decision to deny access to the bottom half of page 130.
- 2. I order the Ministry to disclose the remaining pages of the record, in their entirety, to the appellant by sending him a copy of the record by **August 21, 1997** but not before **August 18, 1997**.
- 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 record disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ July 17, 1997