



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1445**

**Appeal P\_9700106**

**Ministry of the Attorney General**



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## **NATURE OF THE APPEAL:**

The Halton Regional Police Services Board (the Police) received a request for access to all information held within the files of the Police respecting the investigation of a complaint by a named individual against the requester. The Police transferred part of this request to the Ministry of the Attorney General (the Ministry).

The Ministry located a number of responsive records and denied access to them under the following sections of the Freedom of Information and Protection of Privacy Act (the Act):

- solicitor-client privilege - section 19
- invasion of privacy - section 21/49(b)
- refuse to disclose requester's own information - section 49(a)

The requester (now the appellant) appealed the Ministry's decision.

During mediation of the appeal, the appellant confirmed that records which were duplicates of records at issue in Appeal Number M-9700119 (Halton Regional Police Services Board) would not be at issue in this appeal. In addition, the appellant agreed that a record authored by his counsel would not be at issue in this appeal.

As no further mediation was possible, a Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from the Ministry only. With its representations, the Ministry included a copy of a letter to the appellant indicating that one record had recently been disclosed to him.

## **RECORDS:**

The records at issue in this appeal consist of police notes, memoranda, letters, police Offence Forms and police computer print-outs.

## **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 records and the submissions of the Ministry and find that all of the records constitute the personal information of the appellant and other identifiable individuals.

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution and the appellant, therefore, he has a general right of access to those records which contain his personal information.

Section 49 sets out exceptions to this right. Where a record contains the personal information of both the appellant and another individual, section 49(b) of the Act gives the Ministry the discretion 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.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. 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.

The Ministry submits that section 21(3)(b) of the Act applies to all the records at issue. Section 21(3)(b) states:

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.

The Ministry states that the records were compiled as a result of a criminal investigation into alleged acts of sexual misconduct. Criminal charges were laid by the complainant and subsequently withdrawn by the Crown's office. The Ministry points out that the records contain the personal information of other individuals such as witnesses. The appellant did not submit representations.

I find that the records were compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the personal information in these pages is subject to the presumption in section 21(3)(b) of the Act.

I have considered the application of section 21(4) of the Act and find that none of the personal information at issue falls within this provision and the appellant has not claimed that section 23 applies in this case. Thus, I find that disclosure of the records **would** constitute an unjustified invasion of the personal privacy of other identifiable individuals and, therefore, are exempt under section 49(b) of the Act.

Because of the way I have resolved the issues in this appeal, it is not necessary for me to consider the application of sections 19, 21 and 49(a).

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_

Marianne Miller  
Inquiry Officer

August 22, 1997