



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1466

Appeal P\_9700202

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 access to interview statements made by a number of individuals (the affected persons) during an Ontario Provincial Police (OPP) investigation into the accidental death of the appellant's son.

The Ministry located the requested information and, pursuant to section 28 of the Act, contacted the 20 affected persons, seeking their views on the disclosure of the information which relates to each of them in the records. Five of the individuals contacted consented to the disclosure of this information, four individuals refused to consent and 11 did not respond. The Ministry disclosed those portions of 13 pages of the records which relate to the consenting affected persons. Access to the remaining information was denied, based on the invasion of privacy exemptions in sections 21(1) and 49(b) of the Act.

The appellant appealed the Ministry's decision. A Notice of Inquiry was provided by this office to the appellant, the Ministry and to the 15 affected persons who did not consent or did not respond to the Ministry's original notification. Representations were received from the appellant, the Ministry and three of the affected persons. Two of these affected persons consented to the disclosure of the records and one individual declined to do so.

The records consist of 45 pages of interview and supplementary interview reports compiled by the OPP officer responsible for the investigation into the death of the appellant's son.

## **PRELIMINARY ISSUE:**

### **PERSONAL REPRESENTATIVE**

The Notice of Inquiry requested the parties to the appeal to consider whether the appellant qualifies as the "personal representative" of his son within the meaning of section 66(a) of the Act. The appellant indicates that he accepts that he is not entitled to obtain access to the records through the operation of section 66(a). I will not, accordingly, address this issue further.

## **DISCUSSION:**

### **PERSONAL INFORMATION/INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have reviewed the records to determine if they contain personal information and, if so, to whom the information relates. I find that the records contain the names of the affected persons and describe the activities of these individuals prior to the death of the appellant's son. This

information qualifies as the personal information of these individuals, as well as the appellant's son, within the meaning of section 2(1). None of the records contain the personal information of the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. One of these is found in section 21(1)(a) which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

Two of the affected persons have consented to the disclosure of their personal information to the appellant. I find, therefore, that the exception to the prohibition against disclosure applies to this information and it should be released to the appellant.

Another exception to the prohibition against disclosure in section 21(1) is found in 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 result in 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 circumstances that are relevant in the circumstances of the case.

The Ministry claims that the information contained in the records falls within the ambit of the presumption in section 21(3)(b), which reads:

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;

It also submits that the information is "highly sensitive" within the meaning of section 21(2)(f). One of the affected persons indicates that the disclosure of the statement which he or she supplied to the investigating officer would result in an unjustified invasion of the personal privacy of the individuals whose personal information is contained therein. This individual also questions the appellant's need for the information, as no criminal charges were laid as a result of

the investigation. Finally, the affected person submits that the disclosure of the information will expose him or her to harm (section 21(2)(e)) and may unfairly damage the reputations of the people named in the records (section 21(2)(i)).

The appellant submits that, as the father of the deceased individual who was the subject of the investigation, he should have a right to have as much information as is available to determine what happened to his son prior to his death. He argues that no public policy interest exists in the non-disclosure of the views and opinions which individuals make about events which they simply observe. As such, in his view, section 21(3)(b) has no application. In addition, the appellant takes exception to the presumption that unless an individual specifically consents to the disclosure of their personal information he or she is assumed to be refusing to consent to access being granted. The appellant feels that this should not be assumed in the present circumstances.

The appellant also refers to the "public interest override" provision in section 23 of the Act and submits that there exists a compelling public interest in the disclosure of this information to him.

In my view, the Act clearly sets out that consent to the disclosure of one's own personal information cannot be inferred without written permission, as described in section 21(1)(a). It is not possible under the Act to infer consent to disclosure in the absence of this written indication of an individual's preference.

I also find that the records were compiled by an OPP officer in the course of a law enforcement investigation into the death of the appellant's son. Accordingly, the section 21(3)(b) presumption applies to the information in the records. The fact that no legal proceedings were initiated does not negate the applicability of this presumption (Orders P-223 and P-237).

As previously noted, the only way in which a presumption under section 21(3) of the Act may be rebutted is where the information falls within section 21(4) of the Act or where the public interest override in section 23 is found to apply.

In this case, the information at issue does not fall within section 21(4) of the Act. In addition, I find that while the appellant's interest in the disclosure of the information is very compelling, it is, in my view, a private interest only. I cannot, therefore, agree that there exists any **public** interest in the disclosure of these records. In these circumstances, the presumption in section 21(3)(b) has not been rebutted. The disclosure of the personal information of the non-consenting affected persons would thus constitute an unjustified invasion of these individuals' personal privacy under section 21(1) of the Act. Only that information relating to the consenting affected persons, should be disclosed.

## **ORDER:**

1. I order the Ministry to disclose to the appellant those portions of the records which I have **not** highlighted on the copy provided with this order to the Ministry's Freedom of Information and Protection of Privacy Co-ordinator by **November 14, 1997**, but not before **November 10, 1997**.
2. I uphold the Ministry's decision to deny access to the remaining portions of the records.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ October 10, 1997