



Information and Privacy
Commissioner/Ontario

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

ORDER P-1461

Appeal P_9700167

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) for records relating to a specified motor vehicle accident, including officers' notes, witness statements and police photographs.

The Ministry located responsive records and, pursuant to section 28(1), notified four individuals (the affected persons) who might have an interest in disclosure of the records. One individual consented to the disclosure of his personal information to the requester and the three other individuals could not be located (the Ministry determined that one individual was deceased).

The Ministry subsequently advised the requester how to obtain copies of relevant police photographs from the Ontario Provincial Police (the OPP) outside the freedom of information process. The requester has since obtained photocopies of the relevant photographs.

The Ministry granted partial access to the police officers' notes and witness statements (which are contained in the police officers' notebooks), including the information pertaining to the affected person who consented to disclosure. The Ministry denied access to eight pages in their entirety and to portions of twelve other pages, based on the following exemptions under the Act:

- facilitate commission of unlawful act - section 14(1)(l);
- invasion of privacy - section 49(b); and
- discretion to refuse requester's own information - section 49(a).

The Ministry also advised the requester that portions of the police officers' notebooks are not responsive to his request.

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

During mediation, the Appeals Officer clarified with the appellant that he was not seeking those portions of the records which are not responsive to the request. The appellant also indicated that he was not interested in receiving the police "ten codes" which are interspersed throughout the records. The Ministry has claimed sections 14(1)(l) and 49(a) solely with respect to the "ten codes". Accordingly, sections 14(1)(l) and 49(a) are no longer at issue in this appeal.

This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from the Ministry only.

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 find that the records contain the personal information of the appellant and other individuals.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the institution has the discretion to deny the requester access to that information.

In this situation, 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. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2). The only way a presumption can be rebutted is if it falls under section 21(4) or if section 23 applies to it.

The Ministry submits that the personal information in the police officers’ notes was compiled and is identifiable as part of an OPP investigation into a possible violation of law (section 21(3)(b)).

The records at issue in the appeal document the investigation undertaken by the OPP in response to the motor vehicle accident involving the appellant and two of the affected persons. The information in them consists of police observations and statements given by the affected persons. In my view, the personal information in the records clearly falls within the presumption in section 21(3)(b). I find that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of the Criminal Code or the Highway Traffic Act.

I find that sections 21(4) and 23 do not apply. Accordingly, I find that disclosure of this information would constitute an unjustified invasion of personal privacy and the exemption in section 49(b) applies.

ORDER:

I uphold the Ministry’s decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

October 2, 1997