



Information and Privacy
Commissioner/Ontario

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

ORDER P-1468

Appeal P_9700228

Ministry of the Solicitor General and Correctional Services



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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 a copy of records relating to an incident involving the appellant which was investigated by the Ontario Provincial Police (the O.P.P.) on March 28, 1997.

The Ministry identified a two-page "General Occurrence Report", and granted partial access to both pages. The Ministry denied access to the remaining information pursuant to the following exemptions under the Act:

- law enforcement report - section 14(2)(a)
- invasion of privacy - section 49(b)
- discretion to refuse requester's own information - section 49(a)

The appellant appealed the Ministry's decision.

During mediation, the Ministry identified 11 pages of police officer's notes as additional responsive records. The Ministry granted access in full to one page and partial access to five others. The Ministry claimed that some of the withheld information was not responsive to the request, and the appellant agreed. Sections 21(3)(b) and 49(b) of the Act were raised as the basis for denying access to the remaining pages and partial pages. Therefore, the records remaining at issue in this appeal are the severed portions of the two-page "General Occurrence Report", and four pages of police officer's notes.

A Notice of Inquiry was provided to the Ministry and to the appellant. Representations were received from both parties.

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. I have reviewed the records and I find that the records all contain the personal information of the appellant and two other identifiable individuals.

Where a record contains the personal information of both the appellant and another individual, section 49(b) allows the Ministry 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. The appellant is not required to prove the contrary.

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.

The only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act or where a finding is made under section 23 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption.

The Ministry submits that the presumption in section 21(3)(b) applies because the personal information was compiled as part of an investigation into a possible violation of law.

The appellant argues that he should be entitled to all responsive records in their entirety because they stem from an incident of trespassing on his property.

Section 21(3)(b) states that:

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;

Having reviewed the representations and the records, I find that the presumed unjustified invasion of personal privacy in section 21(3)(b) applies. The personal information contained in the records was clearly “compiled” and is “identifiable” as part of an investigation into a possible violation of law (the Criminal Code). I also find that neither section 21(4) nor section 23 are applicable.

Accordingly, the withheld portions of the records are exempt from disclosure under section 49(b) of the Act. Therefore, it is not necessary for me to consider the other exemptions claimed by the Ministry.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ October 17, 1997