



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1435

Appeal P\_9700122

Ministry of the Solicitor General and Correctional Services



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## **NATURE OF THE APPEAL:**

The appellant is the insurer of one of four drivers involved in a motor vehicle accident. One of the individuals involved in the accident subsequently initiated a lawsuit and named the appellant's insured as a co-defendant. The appellant's insured has since passed away, and the appellant is now representing his estate in the legal action. I will refer to the appellant's insured as the deceased throughout this order.

The appellant submitted a request to the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a named police officer's notes and any statements made relating to the accident.

The Ministry located responsive records and granted partial access to the police officer's notes. The Ministry denied access to the remainder of the records on the basis of section 21(1) (invasion of privacy). The appellant appealed this decision.

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

The records at issue consist of the withheld portions of the police officer's notes (containing the names and addresses of the other drivers and a witness to the accident) and three witness statements (of the three other drivers).

## **DISCUSSION:**

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

Under section 2(1) of the Act, "personal information" is defined, in part, as recorded information about an identifiable individual. In my view, the information contained in the part of the record which was not disclosed qualifies as the personal information of the deceased and the other drivers involved in the accident.

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 such circumstance is where the individual to whom the information relates consents to the release of the information (section 21(1)(a)). That section states as follows:

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.

The appellant indicates that under the Ontario Automobile Insurance Policy, it has a duty to defend the deceased in any action arising from his involvement in a motor vehicle collision. The appellant states that it is at a disadvantage in defending the lawsuit because its client has passed away and is, therefore, unable to provide a detailed statement regarding the facts of the accident. Similarly, the appellant was not able to obtain a consent from the deceased with respect to this appeal.

In Order P-731, Inquiry Officer John Higgins examined the contractual relationship between an insurer and the insured with respect to motor vehicle accidents. He stated:

In my view, however, it does not constitute written consent authorizing third parties, such as the Ministry, to disclose such information directly to the insurer or its representative without being instructed to do so by an insured person. Accordingly, I find that it does not constitute written consent to disclosure within the meaning of section 21(1)(a).

I agree. Accordingly, I find that there is no implied consent from the deceased within the meaning of section 21(1)(a).

The only other exception to the exemption in section 21(1) which could apply is contained in section 21(1)(f). That exception applies where disclosure of the requested information 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 institution 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 submits that the information was compiled and is identifiable as part of an investigation of a possible violation of law, and disclosure would constitute a presumed unjustified invasion of personal privacy (section 21(3)(b)).

The appellant's reference to the insurer's obligations under the policy could be interpreted as a reference to section 21(2)(d). That section provides a factor favouring disclosure in circumstances where the personal information is relevant to a fair determination of rights affecting the person who made the request.

Having carefully reviewed the evidence before me, I have made the following findings:

- (1) The notes made and statements taken were compiled as part of a police investigation into possible violations of the Criminal Code and the Highway Traffic Act. Accordingly, the information which was withheld was compiled and is identifiable as part of an

investigation into a possible violation of law, so the presumed unjustified invasion of personal privacy in section 21(3)(b) applies.

- (2) Even if I were to find that section 21(2)(d) applied in the circumstances, a presumed unjustified invasion of personal privacy cannot be rebutted by factors listed in section 21(2).
- (3) I find that section 21(4) does not apply to the responsive information which has not been disclosed, and the appellant has not claimed that section 23 of the Act applies in this appeal.
- (4) I find that disclosure of the responsive information which has not been disclosed would constitute an unjustified invasion of personal privacy and is properly exempt from disclosure under section 21(1) of the Act.

**ORDER:**

I uphold the Ministry's decision.

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

Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ August 1, 1997