



Information and Privacy
Commissioner/Ontario

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

ORDER P-1470

Appeal P_9700246

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). The request was for access to copies of witness statements taken by the Ontario Provincial Police (the OPP) following a specified motor vehicle accident in September 1996. The requester is the insurance adjuster for the owner of one of the vehicles involved in the accident. The Ministry identified six witness statements totalling eight pages as responsive to the request and denied access to them, claiming the application of the following exemptions contained in the Act:

- law enforcement - section 14(2)(a)
- invasion of privacy - section 21(1)

The requester, now the appellant, appealed the Ministry's decision. A Notice of Inquiry was provided by this office to the Ministry and the appellant. Representations were submitted by both parties. The appellant advised that he no longer sought access to the identities of the individuals who made the statements to the OPP. The Ministry advised that it was no longer relying on the law enforcement exemption in section 14(2)(a).

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 they describe the activities of these individuals at the time of the accident, the vehicles they were driving and their destinations. In my view, because this information is so intimately related to the witnesses, I find that it qualifies as their personal information. I further find that, even with the names removed, the information pertains to an identifiable individual, 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 exceptions 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;

The appellant submits that the criminal proceedings which resulted from the accident are now complete and that his principals require the records to continue their investigation of the matter in the civil courts. I find that the pursuit of an investigation in furtherance of a civil action is not, however, the type of investigation which is contemplated by the wording in the latter part of section 21(3)(b). The appellant also submits that a number of factors listed in section 21(2) which favour the disclosure of the information contained in the records are also present.

I find that the records were compiled by the OPP in the course of its law enforcement investigation of a motor vehicle accident. Accordingly, the section 21(3)(b) presumption applies to the information in the records. In my view, the fact that the criminal proceedings which were initiated as a result of the accident have now been completed does not negate the applicability of the presumption.

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 and the appellant has not raised the possible application of section 23.

Because the presumption in section 21(3)(b) has not been rebutted, I find that the disclosure of the records would constitute an unjustified invasion of the personal privacy of the witnesses who provided the statements, under section 21(1). They are, therefore, exempt from disclosure.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ October 22, 1997