



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1473

Appeal P\_9700193

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 all information pertaining to a specific domestic incident involving the appellant and her former spouse (the affected person). The request included access to photographs and transcripts of any 911 calls.

The Ministry granted partial access to the records it identified as responsive to the request, claiming the exemptions found in the following sections of the Act to deny access to the remainder:

- facilitate commission of unlawful act - section 14(1)(l);
- law enforcement - section 14(2)(a);
- solicitor-client privilege - section 19;
- invasion of privacy - sections 21(1) and 49(b);
- discretion to refuse requester's own information - section 49(a).

The Ministry identified parts of the records as non-responsive to the request. With respect to responsive photographs and 911 transcripts, the Ministry directed the requester to locations (OPP detachments) where these items can be obtained. The appellant appealed the Ministry's decision.

During the course of mediation, the appellant was advised, and has accepted, that responsive 911 tapes no longer exist. The appellant has also removed the photographs from the scope of the appeal. In addition, the appellant has indicated that she is not pursuing those portions of the police officer's notes which are not responsive to the request. This information is found on pages 5, 17, 20, 22 and 23 in their entirety, and on parts of pages 21, 24 and 25. This information is, therefore, not at issue. As section 14(1)(l) has only been claimed for some of the information which is not at issue, this exemption is no longer at issue.

This office provided a Notice of Inquiry to the appellant, the Ministry and the affected person. Representations were received from all three parties.

During the Inquiry stage of this appeal, the Ministry disclosed further information from pages 19 and 25 to the appellant. However, there is still information on these pages which has been withheld. Therefore, pages 19 and 25 remain at issue. Further, in its representations, the Ministry indicated that it was no longer relying on the exemption in section 14(2)(a) of the Act.

## **RECORDS:**

The portions of the records remaining at issue are the severances found on pages 1, 2, 3, 4, 6, 18, 19, 21 (first severance only), 24 (last severance only) and 25 (first two severances). This information consists of a General Occurrence Report, a Supplementary Report and police officer's notes.

## **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, including any identifying number assigned to the individual and 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 find that the records contain the personal information of the appellant and the affected party.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

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 under section 21(3) can be overcome is if section 21(4) applies to the information or if section 23 (public interest override) applies.

The Ministry submits that disclosure of the personal information at issue would be a presumed unjustified invasion of privacy as the information was compiled and is identifiable as part of an investigation into a violation of law (section 21(3)(b)). In this regard, the Ministry indicates that the records at issue in the appeal document the investigation undertaken by the Ontario Provincial Police in regard to a domestic incident involving the appellant and the affected party. The Ministry indicates that, depending on the specific circumstances, domestic incidents may lead to charges being laid under the Criminal Code. However, in the case involving the appellant and the affected party, no criminal charges were ultimately laid.

Previous orders of this office have considered whether information that an appellant was previously aware of, or which was provided to or received from an appellant by an institution, should be subject to a presumption against non-disclosure (Orders M-384, M-444, M\_613, M\_847 and P-1263). All of these orders deal with fact situations analogous to the present case in that the information at issue was the personal information of both the appellant and other individuals.

These orders found that non-disclosure of personal information which was originally provided to the institution by an appellant, or of which the appellant is clearly aware in the circumstances, would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. They determined that applying the presumption to deny access to the information which the appellant provided to the institution, or of which the appellant is clearly aware, would, according to the rules of statutory interpretation, lead to an “absurd” result.

In my view, in the circumstances of this appeal, this reasoning is equally applicable to the name of the affected person, his address and date of birth. This information forms the majority of the severances to the records .

In these circumstances, I am of the view that to apply the presumption in section 21(3)(b) to these portions of the records would lead to an absurd result. Accordingly, I find that this presumption does not apply to the name, address or date of birth of the affected person. The Ministry has not claimed that any other exemption applies to this information. Therefore, it should be disclosed to the appellant.

With respect to the remaining personal information in the records, I am satisfied that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, namely the Criminal Code. Accordingly, I find that the presumed unjustified invasion of personal privacy in section 21(3)(b) applies to this information.

As I indicated above, no charges were ultimately laid against the affected person. Previous orders of this office have held that section 21(3)(b) applies to investigations into possible violations of law, therefore, there is no need for criminal charges to be laid or for proceedings to have been commenced for the presumption to apply (Orders P-223, P-237, M-22, M-289, M-351, M\_395 and P-613).

I find that none of the information at issue falls within the ambit of section 21(4) nor does the public interest override in section 23 apply. Accordingly, the information at issue, except for the name, address and date of birth of the affected person, is properly exempt under section 21(1).

Because of the findings I have made, it is not necessary for me to address the application of sections 19 and 49(a) of the Act.

## **ORDER:**

1. I order the Ministry to disclose the name, address and date of birth of the affected person to the appellant by providing her with a copy of this information by **December 2, 1997**, but not earlier than **November 27, 1997**.
2. I uphold the Ministry's decision to withhold the remaining personal information.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the portions of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ October 28, 1997