



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1494

Appeal P\_9700211

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 access to copies of an Accident & Injury Report and extracts from a Health Care file relating to the requester as well as "A&D photos". The requester had been an inmate in a correctional facility operated by the Ministry and was allegedly assaulted by a fellow inmate or inmates.

The Ministry granted partial access to the record it identified as responsive to the request and claimed the exemptions found in the following sections of the Act to deny access to the remaining information.

- invasion of privacy - sections 21 and 49(b)

The requester (now the appellant) appealed this decision to the Commissioner's office. This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from the Ministry only.

The record remaining at issue consists of Ministry Occurrence Reports, a form entitled "Decision Not to Lay Criminal Charges" and witness statements. Pages 62, 63 and 64 are duplicates of pages 29, 30 and 31.

## **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 have reviewed the records and the submissions of the Ministry and find that all of the records constitute the personal information of the appellant and other identifiable individuals.

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution. The appellant, therefore, has a general right of access to those records which contain his personal information.

Section 49 sets out exceptions to this right. Where a record contains the personal information of both the appellant and another individual or individuals, section 49(b) of the Act gives the Ministry the discretion to withhold information in the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy.

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. Where one of the presumptions found 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 where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act (the public interest override) applies to the personal information. The Ministry submits that section 21(3)(b) of the Act applies to all the information remaining at issue. Section 21(3)(b) states:

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 Ministry submits that the exempt information was compiled and is identifiable as part of an investigation into a possible violation of the law. The Ministry states that a constable of the Metropolitan Toronto Police Services Board investigated the alleged assault of the appellant by another inmate and that this is an offence under the Criminal Code. The Ministry indicates that the constable took copies of relevant Ministry records and interviewed the appellant as part of his investigation.

In this case, no charges were laid. The Ministry submits, and I agree, that the Ministry is only required to demonstrate that an investigation into a **possible** violation of law took place in order to bring the records which were compiled and are identifiable as part of the investigation within the ambit of the presumption in section 21(3)(b) (Orders P-223 and P-237).

Several previous orders of this office have considered whether information of which an appellant was previously aware, 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, P-1263 and P-1414). 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 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 would, according to the rules of statutory interpretation, lead to an "absurd" result.

In my view, this reasoning is equally applicable in the circumstances of this appeal to information which was provided by others, or was obtained by the Ministry, in the presence of the appellant.

Some of the severed information on page 29 and the severed information on page 36 was clearly either provided to the Correctional Officer by the appellant or was gathered in the presence of the appellant.

In these circumstances, I am of the view that to apply the presumption in section 21(3)(b) to a portion of the severed information on page 29 and to the severed information on page 36 would lead to an absurd result. Accordingly, I find that this presumption does not apply to the information provided by the appellant, or which was provided in his presence, in these pages.

The Ministry has also claimed that disclosure of this information should be found to constitute an unjustified invasion of personal privacy because it is highly sensitive (section 21(2)(f)) and because the release of this information will unfairly expose other individuals to pecuniary or other harm (section 21(2)(e)). In my view, and for the same reasons I have outlined above, I find that to deny access to the information which the appellant provided to the institution based on sections 21(2)(e) or (f) would also lead to an "absurd" result. I have highlighted this information in yellow on the copy of the record which is being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.

With respect to the remaining personal information which was not provided by the appellant found on pages 29-32, 37-40 and 60, 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.

I have considered the application of section 21(4) of the Act and find that none of the personal information at issue falls within this provision and the appellant has not claimed that section 23 applies in this case. Therefore, I find that disclosure of the highlighted portions of the record would constitute an unjustified invasion of the personal privacy of other identifiable individuals and are properly exempt under section 49(b) of the Act.

## **ORDER:**

1. I order the Ministry to disclose to the appellant the information which is highlighted in yellow on the copy of pages 29 and 36 of the record which is being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order by sending the appellant a copy of the severed record by **January 2, 1998** but not earlier than **December 28, 1997**.
2. I uphold the Ministry's decision to withhold the remaining 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 record which is disclosed to the appellant pursuant to Provision 1.

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

November 27, 1997

Marianne Miller  
Inquiry Officer