



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1594

Appeal P-9800044

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, originally submitted in March 1995, was for records relating to the requester's arrest and conviction on a charge of assault. The Ministry responded to the request in August 1996 by forwarding severed copies of some responsive records to the requester. These records were returned at that time to the Ministry as the requester had moved and had not left a forwarding address.

In February 1998, the requester again contacted the Ministry inquiring about its progress in locating the responsive records. The Ministry provided the appellant with a decision letter and granted access to portions of eight pages of responsive records. Access to the remaining parts of the records was denied pursuant to the following exemptions contained in the Act:

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

The requester, now the appellant, appealed the Ministry's decision to deny access to the severed portions of the records and believes that additional records responsive to his request should exist. The appellant is also appealing the Ministry's delay in responding to the request and disputes the Ministry's position that some of the information contained in the severed portions of the records which were disclosed is not responsive to his request.

During the mediation of the appeal, the Ministry located an additional two pages of police officer's notes and provided them to the appellant, with some information severed pursuant to section 49(b). In addition, the Ministry conducted additional searches for records which may have been created by several other officers who were identified by the appellant. It advised the appellant that no responsive information was located in the notebooks of these officers over the relevant time period.

In addition, as a result of another request submitted by the appellant, other records relating to other incidents involving the appellant and the Ontario Provincial Police (the OPP) were disclosed to him in March 1998.

A Notice of Inquiry was provided to the appellant and the Ministry. Submissions were received from both parties addressing the issues described in the Notice.

PRELIMINARY ISSUES:

DELAY IN RESPONDING TO THE REQUEST

During the mediation stage of the appeal, the appellant took issue with the Ministry over its alleged delay in responding to his request, which was originally made in 1995. Section 26 of the Act provides that an institution is required to respond to a request, or transfer a request to the appropriate institution, within 30 days of the receipt of the request. The Ministry acknowledges that the request was received in March 1995 but was not responded to until August 1996. It has

not provided any explanation as to the reason for this delay. Nor has the appellant shed any light on why the Ministry failed to respond to the request within the time frames established by section 26.

As noted above, the Ministry attempted to forward severed copies of the responsive records to the appellant in August 1996. These records were returned to it undelivered as the appellant had moved and left no forwarding address. When contacted by the appellant in February of this year, the Ministry promptly disclosed the severed records, as it is required to do under section 26.

In my view, by disclosing the severed records to the appellant within the time frame required following receipt of the appellant's February 1998 inquiry, the Ministry has now remedied any breach of the requirements of section 26 which may have occurred in 1995-96. Accordingly, this issue is now moot and I need not address it further.

RESPONSIVENESS OF SOME OF THE SEVERED INFORMATION

Again, in the mediation stage of the appeal, the appellant objected to the fact that the Ministry took the position that certain information contained in Pages 3, 4 and 6 was not responsive to his request. The information described by the Ministry as not responsive in Pages 3 and 4 consists of certain CPIC codes used by the OPP to denote a specific OPP detachment. The Ministry indicates that the non-responsive information on Page 6 consists of those portions of a police officer's notebook which describe incidents and activities undertaken by the officer on the day in question which are not related to the incident involving the appellant.

I have reviewed the severed information described by the Ministry as "not responsive" in Pages 3, 4 and 6 and agree with the position taken by the OPP. I find that this information is not "reasonably related" to the request as framed by the appellant and that it is, accordingly, not responsive to the request.

DISCUSSION:

REASONABLENESS OF SEARCH

In his letter of appeal and in later correspondence with the Appeals Officer assigned to the file, the appellant appears to indicate that, in his opinion, the search undertaken by the Ministry for records responsive to his request was inadequate and that additional records should exist. I note that, as a result of another access request by the appellant, he was later granted partial access to other records about other incidents in which he was involved. It is unclear to me from the submissions of the appellant whether these other records are the records which the appellant believes should exist in addition to those addressed in this appeal.

In any event, as requested in the Notice, the Ministry has provided me with information about the searches which it conducted for records which may have been created by several OPP officers identified by the appellant. Based on the information provided by the Ministry, I am satisfied that it has undertaken a thorough search through the records maintained by the specified officers and former officers for information about the incident identified by the appellant. Accordingly, I dismiss this part of the appeal.

PERSONAL INFORMATION/INVASION OF PRIVACY

The information remaining at issue consists of certain severed portions of Pages 1, 2, 4, 5, 6, 7, 8 and 9 of the records, a two-page occurrence report, a two-page computer printout and five pages of police officers' notes. The Ministry claims that this information is exempt from disclosure under section 49(b) of the Act.

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 undisclosed information contained in the records and find that they relate to the appellant and to two other identifiable individuals (the affected persons).

Under section 49(b) of the Act, where a record contains the personal information of both the requester and other individuals, and the Ministry determines that disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the requester access to that information. In this situation, the requester is not required to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. The only situation under section 49(b) in which a requester can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute 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 where 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 contained in section 21(3) apply, the Ministry must consider the relevance of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Ministry submits that the presumption in section 21(3)(b) applies to the record. Section 21(3)(b) of the Act 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 explains that an investigation into the alleged assault was conducted by the OPP and that the responsive records were compiled and are identifiable as part of that investigation.

I am satisfied that the records were compiled by the OPP as part of their investigation into the alleged assault (a violation of the Criminal Code). Accordingly, I find that the presumption in section 21(3)(b) applies to the records, as they were compiled in the course of that investigation. I also find that section 21(4) does not apply in the present circumstances and the appellant has not raised the possible application of section 23. Therefore, in my view, the disclosure of the severed information contained in the records would constitute an unjustified invasion of the personal privacy of the affected persons. Accordingly, the remaining portions of the records are exempt under section 49(b).

Because I have found the undisclosed portions of the records to be exempt from disclosure under section 49(b), I do not need to address the possible application of sections 14(2)(a) and 49(a) of the Act to this information.

ORDER:

I uphold the decision of the Ministry and dismiss the appeal.

Original signed by: _____
Donald Hale
Adjudicator

_____ July 8, 1998