



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1589

Appeal P-9800077

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Casselman detachment of the Ontario Provincial Police (the Police) were notified that an entry and theft incident was alleged to have occurred at the requester's residence. The requester's family named his estranged spouse (the affected person) as the suspect in the incident.

The Ministry of the Solicitor General and Correctional Services (the Ministry) later received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to the above incident. The Ministry identified the responsive records and granted partial access to the records. The requester then contacted the Ministry and requested access to a copy of a letter which had purportedly been faxed to the Police by counsel for the affected person.

The Ministry advised the requester that the police copy of this letter had been forwarded to a local Assistant Crown Attorney. The requester contacted the Ministry of the Attorney General who notified counsel for the affected person in an attempt to obtain consent to disclosure of this letter. Consent was refused. The Ministry of the Attorney General then returned the letter to the Ministry, who issued a second decision letter, denying access.

The requester appealed the decisions to deny access.

During mediation, the requester, now the appellant, indicated that he was seeking access only to the letter. Accordingly, the remaining records which have been withheld by the Ministry are no longer at issue.

The Ministry denied access to the record on the basis of sections 19 (solicitor-client privilege), 49(a) (discretion to refuse requester's own information) and sections 21(1) and 49(b) (invasion of privacy).

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

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. The record consists of a letter written by counsel for the affected person. I have reviewed the information in the record and I find that it relates to the affected person and the appellant.

INVASION OF PRIVACY

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 entry and theft was conducted by the Police. On the day of the alleged incident, counsel for the affected person faxed a letter to the Police. This letter constitutes the record at issue and I find that it is directly related to the Police investigation into the incident.

The appellant states that his daughter attended at the Police station a few days after the incident and was shown a copy of the record by the Police. He submits, therefore, that disclosure of the record could not possibly result in an invasion of privacy. The appellant also submits that the investigation by the Police is now complete, did not result in any charges or criminal proceedings and, therefore, the presumption in section 21(3)(b) does not apply.

I have reviewed the information in the record together with the submissions of the parties. In my view, the fact that the record was shown to the appellant's daughter does not constitute access under the Act and does not invalidate the privacy rights of the affected person.

I am satisfied that the record was compiled by the Police as part of their investigation into the alleged entry and theft (a violation of the Criminal Code) and section 21(3)(b) applies. The presumption in section 21(3)(b) only requires that there be an investigation into a possible violation of law. Therefore, in this case, the fact that no charges were laid and criminal

proceedings were not instituted against the affected person does not negate the applicability of section 21(3)(b) (Orders P-613 and P-1338). I find that section 21(4) does not apply in the present circumstances and the appellant has not raised the possible application of section 23. Accordingly, the record is exempt under section 49(b).

Because I have found the record to be exempt from disclosure under section 49(b), I do not need to address the application of sections 19 and 49(a) of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Adjudicator
(formerly Inquiry Officer)

_____ June 23, 1998