



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1588

Appeal P-9800067

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Office of the Police Complaints Commissioner (the PCC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to a specified complaint file. The requester indicated that his request specifically included information relating to the responses of a named chief of police and a named superintendent of police (the affected persons) against whom he had filed a complaint of inappropriate conduct.

Subsequent to the request being filed, the Police Services Amendment Act, 1997 was passed which repealed Parts V and VI of the Police Services Act. The amendments came into force on January 31, 1998 and eliminated the office of the Police Complaints Commissioner. However, for the purposes of the Act, the Attorney General is the head of the PCC and the processing of the request was continued by the Ministry of the Attorney General (the Ministry).

The Ministry granted partial access to the responsive records. The Ministry denied access to the remaining eight pages of records under sections 14(2)(a) (law enforcement report), 49(a) (discretion to refuse requester's own information) and sections 21(1) and 49(b)(invasion of privacy). The Ministry advised the requester that the information relating to the responses of the affected persons does not exist. The requester appealed the decision to deny access.

The records at issue consist of eight pages, made up of an internal memorandum (Record 42), a record of contact (Record 30) and correspondence (Records 22, 32, 40 and 43).

With respect to the issue of the responses of the affected persons, the Ministry had agreed, during mediation, to provide the appellant with a written explanation as to why this information does not exist. As of the date of this order, the Ministry has not complied with its agreement. However, the Ministry has now undertaken to provide such a letter to the appellant by June 26, 1998. Therefore, I will not address this issue further in this order.

This office provided a Notice of Inquiry to the appellant, the two individuals who were the subject of the appellant's complaint (the affected persons) and the Ministry. Representations were received from all parties.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined to mean, in part, recorded information about an identifiable individual. I have reviewed the records and find that they contain the personal information of the appellant and the affected persons.

INVASION OF PRIVACY

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 another individual and the PCC determines that the 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.

Since the requester has a right of access to his/her own personal information, the only situation under section 49(b) in which he or she 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.

In their representations, the affected persons have indicated that they have no objection to their personal information being disclosed to the appellant. On that basis, I find that the exception in section 21(1)(a) applies. Accordingly, the records are not exempt under section 49(b) of the Act.

I will now consider the application of the other exemptions claimed by the Ministry.

DISCRETION TO REFUSE APPELLANT'S OWN INFORMATION/LAW ENFORCEMENT

Under section 49(a) of the Act, the Ministry has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. Section 49(a) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. [emphasis added]

The Ministry has exercised its discretion to refuse access to the records at issue which contain the appellant's personal information under section 14(2)(a). In order to determine whether the exemption provided by section 49(a) applies to the information in the records, I will first consider whether the exemption in section 14(2)(a) applies.

In order for a record to qualify under section 14(2)(a) of the Act, the Ministry must satisfy each part of the following three-part test:

1. The record must be a report; **and**
2. The record must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. The record must have been prepared by an agency which has the function of enforcing and regulating compliance with the law.

The Ministry makes no submissions on the application of section 14(2)(a) to Records 22, 40 and 42. With respect to the remaining records, it submits that they relate to the investigating and monitoring mandate of the PCC and that the records were “either sent, received or prepared in the usual course of business by either the PCC or another law enforcement agency”.

The Ministry submits that the records qualify as reports because they were prepared by a law enforcement agency as part of an investigation into a complaint.

Previous orders of this office have accepted that the PCC is an agency which has the function of enforcing and regulating compliance with a law. These orders have also held that an investigation into a public complaint against a police officer is a law enforcement matter since it can lead to charges against the subject officer and a hearing before a Board of Inquiry under the PSA (Orders P-1250 and P-932). I agree with the above findings and adopt them for the purposes of this appeal.

Having reviewed the records, I am satisfied that they relate to an initial investigation conducted by a police force and the PCC, into a complaint made against two police officers. I find, therefore, that Parts 2 and 3 of the above test have been met.

The word “report” is not defined in the Act. However, previous orders have found that in order to qualify as a report, a record must consist of a formal statement or account of the results of the collection and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Orders P-390 and P-1422).

My review of the records show that Records 22, 32, 40, 42 and 43 consist of routine correspondence about administrative matters relating to the filing of the complaint. Record 30 consists of handwritten notes detailing a telephone conversation between the appellant and a PCC staff member. In my view, these records relate to routine matters of an administrative nature and contain only factual information. I find that none of these records contain a formal statement or account of the results of the collection and consideration or analysis of information and therefore, these records do not qualify as “reports” for the purposes of section 14(2)(a). Accordingly, I find that section 49(a) of the Act does not apply.

ORDER:

1. I order the Ministry to disclose the records to the appellant by sending him a copy by **July 14, 1998**.
2. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

June 23, 1998

Mumtaz Jiwan
Adjudicator
(formerly Inquiry Officer)