



**Information and Privacy
Commissioner/Ontario**

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

Reconsideration Order R-980027

Appeal P-9800044

Order P-1594

Ministry of the Solicitor General and Correctional Services



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BACKGROUND:

On July 8, 1998, I issued Order P-1594 which dealt with an appeal from a decision of the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). In that order, I found that certain records which were responsive to the appellant's request were exempt from disclosure under section 49(b) of the Act.

Following the issuance of that order, a further appeal was received from the appellant seeking a review of the Ministry's decision not to disclose portions of a record which had been made available to him on June 16, 1998 and which was responsive to the original request. While I had considered the application of the exemption in section 49(b) to the undisclosed portions of this record, this is not reflected in the wording of the order.

For this reason, I found that there had been a failure of natural justice in that the appellant had not been given the opportunity to make submissions on the application of section 49(b) to the undisclosed parts of the record which had been disclosed to him on June 16, 1998. As a result of this finding, I decided to reconsider my decision in Order P-1594 only with respect to the application of the section 49(b) exemption to this record. The parties to the appeal were, accordingly, asked to make submissions in this regard. Representations in response to this aspect of the Notice of Inquiry were received from both the Ministry and the appellant.

In addition, in light of this additional disclosure which had taken place on June 16, 1998, the appellant was asked to consider whether he wished to make any further representations on the reasonableness of the Ministry's search for records responsive to the original request. The appellant did not make any additional submissions with respect to the adequacy of the Ministry's search for records following the additional disclosure made to him on June 16, 1998. As I have not been provided with any basis for amending the finding made in Order P-1594 in this regard, I find that the Ministry's search for records responsive to the appellant's request was adequate.

The sole information at issue in this appeal is the undisclosed portion of the record which was disclosed to the appellant by the Ministry on June 16, 1998.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

As noted above, the information at issue in this reconsideration consists of the undisclosed portions of one page of notes taken by a police officer following an incident involving the appellant. Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed this record and find that it contains the personal information of the appellant and 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 record was compiled and is identifiable as part of that investigation.

I am satisfied that the record was 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 record, as it was 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 record would constitute an unjustified invasion of the personal privacy of the affected persons. Accordingly, the remaining portions of the record are exempt under section 49(b).

ORDER:

I uphold the decision of the Ministry and dismiss this reconsideration.

Original signed by: _____
Donald Hale
Adjudicator

_____ August 19, 1998