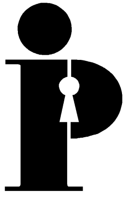

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1618

Appeal P_9800108

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:

- four specific police occurrence reports, and all records about the requester and her husband located at two identified Ontario Provincial Police (OPP) detachments (Part 1); and
- a copy of the 124 pages of a public complaint file relating to a complaint made by the requester and her husband to the Police Complaints Commission (PCC) (Part 2).

The requester's husband provided the Ministry with written consent to disclose his personal information to the requester.

The Ministry identified 78 pages of records responsive to Part 1 of the request, and granted access in full to 32 pages, partial access to 21 other pages, and denied access to the remaining 25 pages. The Ministry relied on the following exemptions as the basis of denying access:

- law enforcement - sections 14(2)(a) and 49(a)
- solicitor-client privilege - sections 19 and 49(a)
- invasion of privacy - sections 21 and 49(b)

The Ministry denied access to all records responsive to Part 2 of the request, on the basis that these records fell within the scope of sections 65(6)1 and 65(6)3, and therefore outside the jurisdiction of the Act.

The requester (now the appellant) appealed the Ministry's decisions.

A Notice of Inquiry was sent to the appellant and the Ministry, and representations were received from both parties. In its representations, the Ministry withdrew the section 19/49(a) exemption claim, and disclosed an additional 7 records or parts of records to the appellant.

After issuing the Notice of Inquiry, our Office released a number of orders dealing with the interpretation of section 65(6). Because these orders could have an impact on the present appeal, both parties were sent a Supplementary Notice of Inquiry and provided with an opportunity to make representations on the impact of these new decisions. The Supplementary Notice provided a summary of the findings in these recent orders and a list of factors and questions that might be of assistance in preparing representations.

Supplementary representations were received from both parties.

RECORDS:

The records responsive to Part 1 of the request include letters, police occurrence reports, supplementary reports, incident summaries, "will say" statements, instructions for Crown Counsel, and handwritten notes.

The records responsive to Part 2 of the request are letters, police occurrence reports and portions of a Crown brief.

DISCUSSION:

JURISDICTION

The Ministry states that the records responsive to the Part 2 of the request comprise the public complaint file produced as a result of the OPP's investigation of a complaint made by the appellant's husband. This complaint was filed in July 1992 pursuant to Part VI of the Police Services Act, R.S.O. 1990 (the PSA), and involved allegations that OPP officers had failed to thoroughly investigate an incident in which the appellant's husband alleged he had been assaulted by another individual. After completing its investigation, the OPP determined that the complaint was not substantiated, and the appellant's husband requested a review by the PCC.

Sections 65(6) and 65(7) state:

> (6) Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
>
> 2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.
>
> (7) This Act applies to the following records:
>
> 1. An agreement between an institution and a trade union.
>
> 2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.

3. An agreement between an institution and one or more employees resulting from negotiations about employment_related matters between the institution and the employee or employees.

4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

Section 65(6) is record-specific and fact-specific. If this section applies to a specific record, in the circumstances of a particular appeal, and none of the exceptions listed in 65(7) are present, then the record is excluded from the operation of the Act and not subject to the Commissioner's jurisdiction.

Section 65(6)3

In order for a record to fall within the scope of paragraph 3 of section 65(6), the Ministry (ie. the OPP in this case) must establish that:

1. the record was collected, prepared, maintained or used by the OPP or on its behalf; **and**

2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; **and**

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the OPP has an interest.

[See Orders M-835, M-899, M-922 and P-1242]

Requirements 1 and 2

The Ministry states that section 76(1) of the PSA requires the Commissioner of the OPP to establish and maintain a public complaints investigation bureau, and that the OPP's Professional Standards Bureau was created to investigate public complaints against OPP officers. The Ministry submits that the records responsive to Part 2 of the appellant's request all relate directly to the investigation of the public complaint initiated by the appellant's husband. The Ministry states that:

> ... the records at issue were clearly collected, prepared, maintained and/or used by employees of the OPP in relation to meetings, discussions or communications. The records were the result of a complaint under Part VI of the PSA and in order to fully investigate the complaint, the records at issue were compiled and examined and used to determine allegations of misconduct by the subject officers.

The appellant states that "it is noted that these records were provided by the OPP for the Police Complaints Commissioner in response to our request that he/she review the decision of the Chief of Police that no further action was necessary."

I am satisfied that the records were collected, prepared, maintained and/or used by the OPP in relation to meetings, consultations, discussions or communications relating to an investigation of the appellant's husband's complaint against the OPP officers. Therefore, requirements 1 and 2 have been met.

Requirement 3

The Ministry submits that proceedings under Part VI of the PSA relate to the employment of the police officers who are the subject of the investigation. The Ministry refers to Order M-931 in which Adjudicator Donald Hale held that an investigation of a complaint under Part VI of the PSA by a police force is about an employment-related matter. Similarly, I find in the present appeal that the investigation of the complaint about OPP officers filed by the appellant's spouse is about an employment-related matter.

In Order P-1242, I stated the following regarding the meaning of the term "has an interest":

> Taken together, these [previously discussed] authorities support the position that an "interest" is more than mere curiosity or concern. An "interest" must be a legal interest in the sense that the matter in which the Ministry has an interest must have the capacity to affect the Ministry's legal rights or obligations.

The Ministry submits that the PSA requires that a number of statutory obligations be met by a police service, referring specifically to sections 76(1) and (2) and section 79 of the PSA. The Ministry further submits that:

> ... the Commissioner of the OPP has a legal responsibility to ensure that proper policing procedures, standards and regulations, which includes the PSA and the Criminal Code, are adhered to by members of the OPP.

The Ministry refers to Order M-931 in which it was held that because of the statutory requirements of Part VI of the PSA imposed on a police force to investigate public complaints, the police have "an interest" in the investigation.

The Ministry also refers to Order P-1481 involving a request for similar records about a public complaint against a member of the OPP. In that Order, Adjudicator Laurel Cropley found that the records fell within the scope of section 65(6)3.

In her representations, the appellant submits:

> These records concern a complaint about a police officer. The OPP may have been concerned, but the legal rights or obligations of the OPP were not affected. The OPP does not have a "interest" as defined on page 4 of the Notice of Inquiry.

In recent Orders P-1575, P-1586 and M-1128, the meaning and intent of the application of "legal interest" was examined in various contexts.

In Order P-1575, I had to determine whether the Ministry of the Attorney General had a legal interest in the appellant's performance evaluation. I stated that:

> I accept that the Ministry has an interest in or an obligation to administer its performance appraisal process and policies fairly. However, in my view, that is not sufficient to bring the employment-related matter within the scope of section 65(6)3. To meet the requirements of this section, the Ministry must establish an interest that has the capacity to affect its legal rights or obligations.

I considered whether the matter at hand was grievable and examined the collective agreement and the Ontario Labour Relations Act. I found that there was no evidence that a grievance had been filed, nor was there evidence of arbitrary discrimination or unfair actions on the part of the Ministry. In addition, several months had passed since the appellant had received her performance appraisal and there was no evidence that "exceptional circumstances" existed which would allow her to take any steps in now bringing a complaint. I concluded:

> Even if the appellant has a right to grieve her performance appraisal, which is certainly not clear, the time period for filing a grievance has long-since expired. Therefore, I find that there is no legal forum in which the appellant can challenge the Ministry with respect to her performance appraisal under the terms of the collective agreement with OPSEU. Accordingly, I find that the performance appraisal is not an employment-related matter in which the Ministry has an interest, and the third requirement of section 65(6)3 has not been established.

In Order P-1586, I considered whether Ontario Hydro (Hydro) had an interest in records relating to matters regarding the resignation of a named individual. I found that:

> ... the routine discharge of responsibilities imposed by statute is not, in and of itself, sufficient to constitute an ongoing legal interest. The statutory responsibility must be considered in context.

In considering Hydro's legal obligations to properly discharge its responsibilities under the Power Corporation Act, I went on to find that:

> ... several months have passed since the affected person's employment with Hydro ended, and the matters under consideration at the time the meeting minutes were created have concluded. In other words, the context has changed. There is no evidence before me to suggest that there is an ongoing dispute or other employment-related matter involving Hydro and the affected person that has the capacity to affect Hydro's legal rights or obligations.

In Order M-1128, Adjudicator Cropley applied the reasoning from Orders P-1575 and P-1586, and concluded that the Toronto Police Services Board did not have a legal interest in records consisting of the appellant's application for employment and related documentation. She stated:

> ... In considering whether the Police have a "legal interest" in the matter, that is, the appellant's application for employment and subsequent hiring, in my view, there must be a reasonable prospect that this interest will be engaged.
>
> The records at issue in this discussion were collected and used by the Police over ten years ago. There is no indication from either the appellant or the Police that the hiring process has been challenged or is at issue in any way. The fact that no action has been taken in this regard since the appellant was hired leads me to conclude that there is no reasonable prospect that the institution's legal interest in the circumstances of his hiring would be engaged in the future.

In the present appeal, I agree that the OPP had an obligation under the PSA to investigate the appellant's spouse's complaint against the two OPP officers, and that this constituted a legal interest in an employment-related matter at the time of the investigation. However, six years have passed since the OPP's investigation and the subsequent complaint to the PCC. I have been provided with no evidence to suggest that there is an outstanding interest in the investigation that has the capacity to affect the OPP's legal rights or obligations.

As I noted above, section 65(6)3 is record specific and fact specific. In the circumstances of this case, there is no matter pending or reasonably foreseeable which has the capacity to affect the Ministry's legal rights or obligations. Therefore, I find that the Ministry has not demonstrated that it has a sufficient legal interest in the investigation records to bring them within the ambit of section 65(6)3.

Therefore, I find that the third requirement of section 65(6)3 has not been established.

Section 65(6)1

In order for records to fall within the scope of paragraph 1 of section 65(6) of the Act, the Ministry must establish that:

1. the records were collected, prepared, maintained or used by the OPP or on its behalf; **and**

2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; **and**

3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the OPP.

Requirement 1

In its representations the Ministry states:

> The records contained in the public complaint file were collected, prepared, maintained or used in connection with the investigation of the public complaint against the subject officer.

I agree, and find that the first requirement has been established.

Requirements 2 and 3

The Ministry submits that:

> The appellant's husband alleged that the subject officer committed a misconduct under Part V of the PSA ...
>
> Had the allegation against the subject officer been sustained, the matter could have lead to disciplinary proceedings against the officer under Part V of the PSA. In the event that a penalty was imposed on the subject officer after a disciplinary proceeding, the subject officer would have the right to appeal the penalty to a Board of Inquiry before the Public Complaints Commissioner.

The Ministry refers to Order M-840, in which I found that:

> ... a disciplinary hearing conducted under section 60 of the PSA is a dispute or complaint resolution process conducted by a court, tribunal or other entity which has, by law, the power to decide disciplinary matters. As such, these hearings are properly characterized as "proceedings" for the purpose of section 52(3)1[municipal equivalent to section 65(6)1].
>
> ...
>
> [t]he Chief of Police or delegate has the authority to conduct "proceedings", and the power, by law, to determine matters affecting legal rights and obligations, and is properly characterized as an "other entity" for the purposes of section 52(3)1.

Under Part 2 of the PSA, the definition of Chief of Police includes the Commissioner of the OPP.

The Ministry also submits that the public complaint file relates to the employment of a person by the Ministry, and refers to Order M-835, in which I stated:

> In the circumstances of this appeal, the disciplinary hearing was initiated as a result of an internal complaint under Part V of the PSA, not under the public complaints part of the statute (Part VI). Despite what I acknowledge to be a general public interest in policing matters, I find that these Part V proceedings do in fact "relate to the employment of a person by the institution". The penalties outlined in section 61(1), which may be imposed after a finding of misconduct, involve dismissal, demotion, suspension, and the forfeiting of pay and time. In my view, these can only reasonably be characterized as employment-related actions, despite the fact that they are contained in a statute and applied to police officers.

In the circumstances of this appeal, there was the possibility of a disciplinary hearing under Part V of the PSA. Under section 91 of the PSA, the PCC had the right to review the decision of the Commissioner of the OPP that no further action was required with respect to the investigation conducted by the OPP. In my view, both the disciplinary hearing and the review process would constitute "proceedings or anticipated proceedings before a court, tribunal or other entity" for the purposes of section 65(6)1.

I am satisfied that the OPP disciplinary hearing and the PCC review process are properly characterized as "proceedings" under the PSA, and that these proceedings relate to "the employment of a person" by the OPP.

I am also satisfied that the records were collected, prepared, maintained or used in relation to these proceedings at the time the investigations and hearings took place. However, in my view, in order for section 65(6)1 to apply to these records in the context of the present appeal, it must be established that the proceedings or anticipated proceedings referred to are current or are in the reasonably proximate past so as to have some continuing potential impact for any ongoing labour relations issues which may be directly related to the records.

As previously stated, the OPP's investigation into the appellant's husband's complaint and the subsequent complaint made by appellant and her husband to the PCC took place six years ago.

The appellant states:

> ... this complaint is most certainly not current nor are we able under the law to pursue this matter further. The Police Complaints Commission informed us in 1993 that they intended to take no further action. Although we did not know it at the time nor did the Commission inform us, if the complainant wishes to take further action he/she must do so within six months of receiving the PCC's decision letter. These six months have long expired and Officer [name] (the subject of this complaint) is retired from the OPP.

Although the Ministry states that "the record at issue is being maintained for the purpose of responding to further complaints that may be filed by the appellant's husband and for the purpose of maintaining an employment related record concerning a matter which could be deemed relevant in a future related or unrelated proceedings involving the subject officer", I am not persuaded that there are any specific "anticipated proceedings" relating to the complaint file records.

The Ministry disputes this time-sensitive approach to the interpretation of section 65(6)1, and states:

> It is the Ministry's position that the wording of section 65(6) does not specify that a labour relations or employment-related proceeding/anticipated proceeding be ongoing or current for the exclusion in section 65(6)1 to apply. The Ministry also submits that [the Act] does not specify that an interest must be current or ongoing

> in order for the exclusion in section 65(6)3 to apply. In the view of the Ministry, there are no time limitations associated with section 65(6).

However, the Ministry goes on to state:

> Notwithstanding the foregoing, the Ministry wishes to offer a few comments in relation to the specifics of this appeal. The record at issue is a closed investigation file comprised of the records compiled during the investigation of a public complaint filed under section VI of the PSA by the appellant's husband against the subject officer. The final report regarding the complaint was dated February 22, 1993... The very fact that several years after the complaint file closure, the appellant has requested to access additional information under [the Act] suggests that issues relating to the complaint are still ongoing.
> ...
>
> ... The Ministry has found it necessary to retain inactive employment-related records, incurring the associated administrative and storage costs, because such records remain of long-term interest and value to the Ministry. Complaint files such as the one at issue in this appeal, contain valuable documentation that may be required by the Ministry or the employee in order to respond to future issues that may arise relating to the complaint, the employee or other matters.

I do not accept the Ministry's position. The fact that the appellant has requested access to the complaint file, in my view, is not sufficient to establish that issues related to the request are current or ongoing, nor do the precautionary file management practices of the Ministry persuade me that the subject matter of the particular investigation file in this appeal remains current.

I am also not persuaded by the Ministry's argument that because the wording in the section does not expressly say so, there can be no time limitations associated with section 65(6). In my view, section 65(6) must be understood in context, taking into consideration both the stated intent and goal of the Labour Relations and Employment Statute Law Amendment Act (Bill 7) - to restore balance and stability to labour relations and to promote economic prosperity; and overall purposes of the Act - to provide a right of access to information under the control of institutions and to protect the privacy of and provide access to personal information held by institutions. When proceedings are current, anticipated, or in the reasonably proximate past, in my view, there is a reasonable expectation that a premature disclosure of the type of records described in section 65(6)1 could lead to an imbalance in labour relations between the government and its employees. However, when proceedings have been completed, are no longer anticipated, or are not in the reasonably proximate past, disclosure of these same records could not possibly have an impact on any labour relations issues directly related to these records, and different considerations should apply.

Because I have concluded that no "proceedings or anticipated proceedings before a court, tribunal or other entity" exist, I find that requirements 2 and 3 for section 65(6)1 have not been established.

Because neither section 65(6)1 nor section 65(6)3 applies, I find that all records responsive to Part 2 of the appellant's request (pages 79-202), comprising the PCC complaint file, fall within the jurisdiction of the Act. I will include a provision in this order requiring the Ministry to make an access decision on these records, pursuant to sections 26 and 29 of the Act.

PERSONAL INFORMATION/DENIAL OF REQUESTER'S OWN INFORMATION

Section 2(1) of the Act defines "personal information", in part, to mean recorded information about an identifiable individual.

I have examined the records and find that they contain the personal information of both the appellant, her husband, and other identifiable individuals.

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.

The Ministry submits that it has applied section 49(a) to exempt the requested records from disclosure on the basis of the exemption contained in section 14(2)(a).

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]

I will consider whether the records qualify for exemption under section 14(2)(a) as a preliminary step in determining if section 49(a) applies.

LAW ENFORCEMENT

Section 14(2)(a) of the Act states:

> A head may refuse to disclose a record,
>
> > that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

In order for a record to qualify for exemption 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 report must have been prepared in the course of law enforcement, inspections or investigations; **and**

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

The Ministry submits that the records meet the three-part test for the following reasons:

- the records consist in part of reports and notes documenting the OPP's law enforcement investigation of incidents involving the appellant, her husband and their neighbours which could have lead to Criminal Code charges of public mischief, etc.;

- the information was gathered and prepared during the course of law enforcement investigations undertaken by the OPP; and

- the records were prepared by the OPP, an agency which has the function of enforcing and regulating compliance with the law.

I am satisfied that the OPP is an agency which has the function of enforcing and regulating compliance with laws, and that some, but not all, of the records were prepared in the course of law enforcement investigations. However, regardless of whether Parts 2 and 3 of the test are established, the records at issue must be "reports" in order to qualify for exemption.

The word "report" is not defined in the Act. Previous orders have found that in order for a record to be considered a report, it must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order M-1048).

The records at issue include general occurrence reports, a letter in response to a Crown Attorney's request for background information, a list of contents page, photocopies of photographs, instructions for Crown Counsel, "Will Say" statements, an Information, and handwritten notes.

Having carefully reviewed the records, I find that many (eg. the list of contents, photocopies of photographs, etc.) do not in any way resemble what would normally be considered a "report". Others, such as general occurrence and supplementary reports, are more accurately characterized as recordings of fact rather than accounts of the collation and consideration of information. I find that none of these records constitute "a report" for the purpose of the first part of the section 14(2)(a) exemption test.

Because all three requirements of the section 14(2)(a) test must be present, none of the records qualify for exemption under section 49(a) of the Act.

INVASION OF PRIVACY

Under section 49(b) of the Act, where a record contains the personal information of both the appellant 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.

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. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2).

The only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act or where a finding is made under section 23 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 23 exemption.

The Ministry states that disclosure of the exempted information would constitute an unjustified invasion of personal privacy of other identifiable individuals in accordance with section 49(b) of the Act. The Ministry refers to section 21(3)(b), which 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 exempted information documents the investigation undertaken by the OPP in response to various allegations concerning the appellant, her husband and their neighbours to determine whether criminal offences may have been committed. [The contents of the records would appear to indicate that there was more than one investigation conducted by the OPP relating to these matters.]

Having examined the records, I find that the personal information on pages 1-3, 5-9, 30-31, 42-46, 48-50, 73-74 and 77 was compiled and is identifiable as part of an investigation into a possible violation of law, specifically offences under the Criminal Code of Canada. However, the personal information that has been exempted on pages 1-3, 5-9 (with the exception of one part of page 8), 42 and 46 (with the exception of a date of birth), is information that was provided by the appellant and/or her husband to the OPP.

The appellant states:

> The records contain statements, omitted or censored, which we made about other individuals. This is not personal information protected by the ACT and these records should be provided to us in their entirety. From Order P-1457, "...to prevent disclosure of information which the requester had provided to a government body would be a manifestly absurd result, the exemptions related to privacy protection do not apply in these circumstances."

A number of previous orders (eg. Orders M-384, M-444, M-1093, M-1109 and P-1457) have held that the withholding of personal information relating to an individual other than the requester, in circumstances where the person requesting the information originally supplied the information, would lead to an absurd result, and disclosure of this information would not result in an unjustified invasion of personal privacy. I find that the rationale for this conclusion is applicable to the withheld information on pages 1-3, 5-9 (with the exception of one part of page 8), pages 42 and 46 (with the exception of a date of birth), and this information is not exempt under section 49(b). The only undisclosed portions of pages 30 and 31 consist of the name of the owner of the property which appears under the photographs. The owner's name was provided to the OPP by the appellant, and it would similarly be absurd not to disclose it in the particular circumstances of this appeal.

I find that pages 14-15, 26-27, 32-40, 53-55, 75-76, which include "Will Say" statements, an Information, and a response to a Crown Attorney's request for information, are records that were created following the completion of the OPP investigation. In Orders M-734, M-841 and M-1086 it was held that records which are generated/created following an investigation into a possible violation of law cannot fall within the ambit of the presumption in section 14(3)(b) [the municipal equivalent of section 21(3)(b)]. I agree with this conclusion, and find that it applies equally to the above-noted pages of records.

Therefore, the presumption contained in section 21(3)(b) of the Act applies only to the remaining portion of page 8, the date of birth on page 46, and the undisclosed portions of pages 43-45, 48-50, 73-74 and 77. I find that disclosure of these records would be a presumed unjustified invasion of the personal privacy of individuals other than the appellant and her husband. Neither section 21(4) nor section 23 are applicable in the circumstances of this appeal, and I find that these records qualify for exemption under section 49(b) of the Act.

Because 21(3)(b) does not apply to the undisclosed personal information contained on pages 14-15, 26-27, 32-40, 53-55 and 75-76, the Ministry must consider the various factors listed in section 21(2) to determine whether disclosure of this information would constitute an unjustified invasion of personal privacy.

The Ministry does not make specific reference to section 21(2) but in summary states that "[i]n cases such as this ... [the Ministry] must be very sensitive to the right of privacy of individuals who have been involved in a law enforcement investigation."

The appellant submits that "... the personal information requested is statements, comments or beliefs about us... This information is relevant to us because it affects the manner in which the

OPP treats us." This raised the consideration found in section 21(2)(d) (fair determination of rights) and is a factor favouring disclosure.

In my view, section 21(2)(f) (highly sensitive) is also a relevant consideration in the circumstances of this appeal. The personal information of these other individuals relates to their contacts with the OPP as complainants, witnesses or suspects and, in my view, this information is highly sensitive.

Having weighed the factors favouring privacy protection against the appellant's right to access her own information (and that of her husband), I find that the factors favouring privacy protection are more compelling in the circumstances of this appeal. Therefore, I find that the disclosure of the personal information of other individuals on pages 14, 15 (with the exemption of a name under item 8), page 26 (with the exception of one severance), pages 27, 32-40, 53-54 and 75-76 would result in an unjustified invasion of another individual's privacy, and this information qualifies for exemption under section 49(b) of the Act.

Item 8 on page 15 refers to an Information sworn before a Justice of the Peace by the appellant and her husband against a named individual, and page 55 is a copy of the Information itself. One severance on page 26 is the property owner's name provided to the OPP by the appellant's husband. Following the same reasoning as my previous discussion of 21(3)(b), I find that withholding information originally provided by the appellant and/or her spouse would lead to an absurd result, and that disclosure of this personal information would not result in an unjustified invasion of the other individual's privacy.

ORDER:

1. I order the Ministry to issue a decision letter to the appellant regarding access to records responsive to Part 2 of the request (pages 79-202), comprising the PCC public complaint file, in accordance with sections 26 and 29 of the Act, treating the date of this order as the date of the request.

2. I order the Ministry to disclose pages 1-3, 5, 6, 7, 9, 42 and 55 in their entirety; and pages 8, 15, 26 and 46, subject to the severances highlighted on the copy of these records provided to the Ministry's Freedom of Information and Privacy Co-ordinator which should **not** be disclosed. I order this disclosure to take place by **October 28, 1998**.

3. I uphold the decision of the Ministry to deny access to the remaining records or portions of records.

4. I order the Ministry to provide me with a copy of the decision letter referred to in Provision 1 by sending a copy to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

5. I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant pursuant to Provision 2.

Original signed by: ____________________ ____________ October 7, 1998

Tom Mitchinson
Assistant Commissioner