



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

# **ORDER PO-1686**

Appeal PA-980266-1

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 copies of any and all witness statements, other statements, or information relating to the investigation by the Ontario Provincial Police (the OPP) into the death of the requester's son.

The Ministry located 13 witness statements and, pursuant to section 28 of the Act, notified 13 individuals whose interests might be affected by disclosure of these records (the affected persons). Three affected persons consented to full disclosure, four consented to partial disclosure, two objected to disclosure, and the remaining four either did not respond or had moved and could not be located.

The Ministry subsequently issued its decision to the requester, granting access in full to three statements, partial access to four statements, and denied access to the remaining six statements. The Ministry claimed the following exemptions as the basis for denying access: sections 14(2)(a), 21(1), 49(a) and 49(b) of the Act.

The requester, now the appellant, appealed the Ministry's decision.

During the course of mediation several events occurred. First, the Ministry issued a new decision letter relating to three records previously denied to the appellant in response to a related request in January 1998.

The Ministry claimed sections 14(2)(a), 21(1), 49(a) and (b) as the basis for denying partial access to these records. Second, the Ministry conducted a further search and located the investigating officers' field notes. The Ministry granted partial access to the notes, and claimed sections 14(1)(l), 21(1), 49(a) and (b) as the basis for withholding the remaining portions. Finally, the appellant identified six other police officers who he believed should have notes of the investigation. The appellant and the Ministry agreed that any responsive records held by these police officers would be the subject of a new request.

The records remaining at issue in this appeal consist of witness statements, police officers' notes, a General Occurrence Report, a Supplementary Report, and a Report of the Centre of Forensic Sciences.

A Notice of Inquiry was sent to the Ministry, the appellant and seven affected persons. Representations were received from the Ministry, the appellant and one affected person. In its representations, the Ministry withdrew the section 14(2)(a) exemption claim. At the same time the Ministry issued a new decision letter to the appellant, granting full access to six previously withheld pages of records and partial access to two pages of police officer's notes.

## **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 records all relate to the OPP investigation into a fatal motor vehicle accident involving the appellant's son. The investigation included statements provided by various affected persons, as well handwritten notes made by police officers, a typewritten "General Occurrence" and "Supplementary Report", and a "Report of the Centre of Forensic Sciences" regarding materials submitted for analysis. I find that all of the records contain the personal information of the deceased son, some also contain the personal information of the affected persons who provided their statements, and ten pages also include the personal information of the appellant.

## **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 the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information. Where a record contains only the personal information of individuals other than the appellant, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits the Ministry from releasing this information.

In both these situations, sections 21(2), (3) and (4) 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.

The Ontario Court of Justice (General Division) Divisional Court determined in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767, that 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) 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 21 exemption.

If none of the presumptions in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

The appellant states that he is seeking the information contained in the records in order to assist him in understanding the circumstances surrounding his son's death, the details of the investigation, and whether anyone is responsible for the death. He asks me to weigh the privacy rights of others against his, and his family's, right to know.

The Ministry relies on section 21(3)(b) of the Act, which reads as follows:

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 states that the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of the Criminal Code of Canada and the Highway Traffic Act, and that disclosure would constitute a presumed unjustified invasion of privacy. I agree. None of the personal information contained in these records falls under section 21(4), and the appellant has not raised the possible application of section 23 of the Act. As stated earlier, a weighing of various factors such as those listed under section 21(2), as suggested by the appellant, cannot rebut a presumption under section 21(3).

Accordingly, I find that the records containing the personal information of both the appellant and other identifiable individuals qualify for exemption under section 49(b) of the Act, and all other remaining records or partial records qualify for exemption under section 21(1) of the Act.

#### **FACILITATE THE COMMISSION OF AN UNLAWFUL ACT**

The Ministry claims section 14(1)(l) of the Act as the basis for exempting the OPP's operational "ten-codes". Section 14(1)(l) states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime.

The Ministry states that "ten-codes" are used by OPP officers in their radio communications with each other and with their Detachments and Communication Centres. The Ministry submits that release of the "ten-codes" would compromise the effectiveness of police communications and possibly jeopardize the safety and security of OPP officers. The Ministry relies on previous orders of this Office which have upheld the application of section 14(1)(l) to "ten-codes". (See Orders M-393, M-757 and PO-1665).

Having reviewed the Ministry's representations and the previous orders, I find that the "ten-codes" are properly exempt under section 14(1)(l). As Adjudicator Laurel Croyley stated in Order PO-1665:

... disclosure of the "ten-codes" would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ June 15, 1999