



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

# ORDER P-1630

Appeal P\_9800050

Ministry of the Solicitor General and Correctional Services



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## **BACKGROUND:**

In 1994, an investigation was conducted by three members of the Ontario Provincial Police (the OPP) into the appellant's activities. The appellant is a member of the OPP. The appellant indicates that a brief (entitled Volume IV) was prepared following this investigation and was distributed to all levels within the OPP. The appellant was not charged as a result of this investigation. He indicates that during a related investigation, he was provided with a copy of the brief in question. He indicates that several pages of the brief were missing from the copy he received. He indicates further that because he was not charged, the rules of disclosure which govern criminal proceedings do not apply.

## **NATURE OF THE APPEAL:**

The appellant made a request to the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for the following information which he believes is contained in the brief:

Page 16

Page 188

All of Appendix "A" which included pages 276 to 315.

(Appendix "A" refers (sic) to Consent Form dated 13Oct94, Authorization dated 15Sep94, Warrant to Search phone records dated 22Nov94, Warrant to Search dated 22Nov94, Copy of Order for D.N.R. dated 19Nov94, Copy of Order for D.N.R. dated 19Nov94, Copy of Order for D.N.R. dated 26Oct94. Warrant to search dated 06Oct94, and the Authorization dated 02Dec94).

Pkg. Prepared by [named constable] for the O.P.P. surveillance team.

The Ministry denied access to the pages requested. In its decision letter, the Ministry advised the appellant that records related to the interception of private communications fall outside the scope of the Act because the Criminal Code has specific provisions concerning access to these types of records. In addition, the Ministry cited sections 49(a) (discretion to refuse requester's own information), 14(1)(d) (confidential source), 19 (solicitor-client privilege) and 49(b), with reference to section 21(3)(b) (invasion of privacy) of the Act in support of its decision not to disclose any of the records at issue.

In appealing this decision, the appellant disputed that the records at issue relate to the interception of private communications.

During the course of mediation, the Ministry advised that, although the appellant requested access to records which are numbered up to page 315, the record at issue only contains 310 pages. The Mediator confirmed with the appellant that he was only providing an estimate as to the pages in the brief and that the issue of reasonable search is not an issue in this appeal.

This office provided a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties. In his representations, the appellant indicates that, in light of the

decision in Order P-344, he concedes that the documents contained in pages 278 - 286 and 306 - 310 are not accessible under the Act. Accordingly, these pages are no longer at issue in this appeal.

In its representations, the Ministry advises that upon further review of the search warrant-related records at issue in this appeal, it is now of the opinion that disclosure of these records under the Act is prohibited in accordance with the court orders for non-disclosure which comprise part of the records. These records comprise pages 287 through 310. The Mediator confirmed with the appellant that the records were, in fact, subject to sealing orders. As a result of these discussions, the appellant agreed to remove these pages from the scope of the appeal.

Finally, the Ministry indicates that it reconsidered its original decision to withhold access to the covering page for Appendix "A" documents from the brief entitled Volume IV. It provided this office with a copy of its revised decision addressed to the appellant in which it granted access to this record.

As a result of discussions during mediation, the only records remaining at issue are pages 16, 188, 276 and 277. The Ministry indicates that, in its view, these four pages do not contain the appellant's personal information, and it, therefore, relies on the mandatory exemption in section 21(1) (invasion of privacy) rather than the discretionary exemption in section 49(b). As section 21(1) is considered in conjunction with section 49(b), the appellant has already been apprised of the requirements for this section and has been given an opportunity to address them. Although it originally claimed other exemptions for these four records, the Ministry has not provided representations on any other exemption. As the other exemptions originally claimed by the Ministry are discretionary, I will not consider them further.

## **RECORDS:**

The records at issue consist of a case history summary (page 16), a page of the transcript of a telephone conversation (page 188) and a consent form (pages 276 - 277). These form part of a confidential crown brief prepared by the named constable (which is referred to by the appellant as the brief (Volume IV)).

## **PRELIMINARY MATTER:**

### **SCOPE OF THE APPEAL**

In his representations, the appellant indicates that he is seeking the "information package prepared by [the named constable], for the O.P.P. surveillance team". In identifying this record, the appellant states that the named constable indicated in his statement, which was contained in Volume IV, that he prepared a package of information to be used by the OPP Surveillance Team when they were assigned to keep the appellant under surveillance. The appellant suggests that the type of information which would be included in an information package would include maps, addresses, photographs and background information relating to him. He states further, that he has been informed that the information package is contained in a brief labelled Volume V.

I contacted the Assistant Co-ordinator at the Ministry to advise her that the appellant believed that this record should exist, and that he had made reference to it in his letter of request. The Assistant Co-ordinator replied that the brief referred to by the appellant in his request was prepared by the named constable. She indicates further that the Ministry interpreted this part of the request as simply clarifying the description of the record the appellant was seeking. The Assistant Co-ordinator advised that the analyst who worked on this access request had been in contact with the appellant during the processing of his request. The Ministry indicates that at no time did he clarify that he was looking for a different document.

The question of whether the Ministry responded fully to the appellant's request was not raised by him during the mediation stage of this appeal. Nor was it raised as an issue in the Notice of Inquiry which was sent to all of the parties.

In my view, because of the detail provided by the appellant in formulating his request, and because the responsive records were prepared by the individual identified by him in his request, the approach taken by the Ministry in responding to it was reasonable. Further, the appellant's arguments that more records should exist were not advanced in a timely fashion and the Ministry has not had an opportunity to address them. For these reasons, I will not address the reasonableness of the Ministry's search with respect to this part of the request in this order. If the appellant believes that the records he is seeking exist, he may submit another request to the Ministry.

## **DISCUSSION:**

### **PERSONAL INFORMATION/INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined to mean, in part, recorded information about an identifiable individual. The Ministry submits that although the records at issue were included in an information package prepared by the Criminal Investigation Branch of the OPP in regard to the professional conduct of the appellant, who is an OPP officer, the information in these particular records relates to other identifiable individuals only.

The appellant submits that all of the requested information refers to him because it was used against him, either to prepare reports or to investigate his conduct.

I have reviewed these four pages of records and agree that they do not contain the appellant's personal information. Moreover, they relate to an investigation which was conducted concerning other identifiable individuals. The records, in and of themselves, do not pertain to the conduct of the appellant. Therefore, I find that they do not contain the appellant's personal information. All four pages contain information regarding a number of other identifiable individuals, and I find that this qualifies as their personal information.

Section 21(1) of the Act prohibits the Ministry from disclosing this information except in the circumstances listed in sections 21(1)(a) through (f). In particular, section 21(1)(f) permits disclosure if it "does not constitute an unjustified invasion of personal privacy." Accordingly, in such a case, I must be satisfied that disclosure **would not** constitute an unjustified invasion of another individual's personal privacy.

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.

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 21 exemption.

The Ministry submits that section 21(3)(b) applies to exempt the records at issue from disclosure. This section 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.

In this regard, the Ministry indicates that the records at issue were compiled and are identifiable as part of a police investigation with respect to a named individual who was charged with Conspiracy to Commit Murder contrary to section 465(1)(a) of the Criminal Code.

I am satisfied that the records were compiled by the OPP as part of their investigation into a violation of the Criminal Code. Accordingly, I find that the presumption in section 21(3)(b) applies to these records, as they were 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 information contained in pages 16, 188, 276 and 277 would constitute an unjustified invasion of the personal privacy of the individuals referred to in them. Accordingly, pages 16, 188, 276 and 277 are exempt under section 21(1) of the Act.

## **ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_  
November 10, 1998