



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

ORDER PO-1668

Appeal PA-980340-1

Ministry of the Solicitor General and Correctional Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General and Correctional Services (the Ministry). The request was for access to all personal information of the appellant and all complaints made against the appellant by a named individual. The time frame for the request was July 1, 1997 through October 15, 1998.

The Ministry denied access to the responsive records under sections 49(a) and 14(2)(a) (law enforcement), and section 49(b) (invasion of privacy) of the Act.

The appellant appealed the Ministry's decision to deny access to the records.

I sent a Notice of Inquiry to the Ministry, the appellant and the individual named by the appellant (the affected person). Representations were received from all three parties.

RECORDS:

The records consist of six General Occurrence Reports and six Supplementary Reports.

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 Ministry submits that the records contain the personal information of the appellant and the affected party, and that this personal information falls within paragraphs (a), (b), (d), (e), (g) and (h) of the definition. These parts of the definition read:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (d) the address, telephone number, fingerprints or blood type of the individual,

- (e) the personal opinions or views of the individual except where they relate to another individual,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

The police reports at issue in this appeal document a series of harassment incidents reported to the Thunder Bay OPP by the affected person. The affected person suspected that the appellant was responsible for these incidents which included threatening letters, hang up telephone calls, the smashing of her car windshield by two bricks, and possible sightings of the appellant's vehicle in close proximity to her residence.

I have reviewed the records and I am satisfied that they contain personal information about the appellant and the affected person.

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 other individuals and the institution 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.

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 [Order M-1154; John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 (Div. Ct.)].

The affected person indicates that she is adamantly opposed to the disclosure of any of her personal information.

The Ministry claims that the presumption found in section 21(3)(b) of the Act applies. 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;

The Ministry submits that the reports at issue were compiled and are identifiable as part of an OPP investigation into a possible violation of law. The OPP is an agency which has the function of enforcing the laws of Canada and the Province of Ontario.

As detailed in the reports, the Thunder Bay OPP investigated the affected party's complaints that the appellant might be breaching the conditions of his conditional sentence and/or the recognizance to keep the peace by which he was bound. Section 811 of the Criminal Code provides that a person bound by a recognizance who commits a breach of the recognizance is guilty of an indictable or a summary conviction offence. With respect to the investigation of the harassment incidents reported by the affected party, the OPP concluded that there was insufficient evidence to warrant the laying of any Criminal Code charges against the appellant.

Having reviewed the records at issue, I am satisfied that they were compiled and are identifiable as part of an investigation into a possible violation of law, and section 21(3)(b) applies.

The appellant submits that he made the identical request to the Thunder Bay Police and was supplied with the information. He says he requires the information in order to defend himself in criminal court from the affected person, who he says has a propensity for putting in false police reports. Whether the Thunder Bay Police provided the appellant with the information does not affect the application of section 21(3)(b), or the Ministry's right to exercise its discretion in favour of withholding the information from the appellant under section 49(b). Accordingly, I uphold the Ministry's application of section 49(b).

Given my conclusion that section 49(b) applies, it is not necessary for me to consider the application of section 14(2)(a) to the records.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Adjudicator

_____ April 21, 1999