



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

ORDER PO-1728

Appeal PA_990173_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 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 information concerning a particular motor vehicle incident. The requesters specifically sought access to the name of the driver of a vehicle allegedly involved in the incident. In order to assist the Ministry, the requesters provided the Ministry with the time, date, location and other details concerning the incident.

The Ministry located a “potentially responsive” record and notified the individual named in the record (the affected person) of the request, pursuant to section 28(b). The individual replied to the Ministry, stating that he did not consent to disclosure of his name to the appellants.

After considering the affected person’s views, the Ministry subsequently advised the appellants that:

The subject record documents the fact that a vehicle, similar in description to the one [you] described was stopped by the Ontario Provincial Police [OPP] on Highway #6 on or about [specified date], at approximately the time referenced by [you] ...

The Ministry further stated that access to the name was denied on the basis of sections 15(b) (information received in confidence from another government) and 21(1) (unjustified invasion of personal privacy). In support of the latter exemption claim, the Ministry cited the factor at section 21(2)(f) (highly sensitive information) and the presumption against disclosure in section 21(3)(b) (law enforcement information).

The appellants appealed the Ministry’s decision to this office.

During the mediation stage of the appeal, the Mediator assigned to this matter contacted the affected person to determine whether or not he consented to disclosure of his name to the appellants. The affected person once again stated that he did not consent.

I sent a Notice of Inquiry to the appellants and the Ministry. I received representations from both parties.

In its representations, the Ministry withdraws its reliance on section 15(b) of the Act. As a result, only the personal privacy exemption at section 21(1) is at issue.

RECORDS:

The records containing the responsive information, the name of the affected person, consist of an excerpt from an OPP officer’s notebook, an OPP notice of offence and a Ministry of Transportation vehicle computer printout.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including 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 (paragraph (h)).

The appellants submit:

The disclosure of the name, and the circumstances of this particular matter, does not constitute “personal information” as defined in Section 2(1) of the Act. The individual’s name does not appear with other personal information, as such other personal information is not being requested. The disclosure of the name does not reveal other personal information about the individual . . .

I do not accept the appellants’ submissions. In the circumstances, given the nature of the responsive records, disclosure of the name would reveal the fact that the affected person was stopped by the OPP for an alleged infraction. This clearly is information “about” the affected person, and thus qualifies as his personal information under paragraph (h) of the section 2(1) definition.

INVASION OF PRIVACY

Where a requester seeks personal information of other individuals, 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 an institution from releasing this information.

In this situation, 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 institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that 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) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

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

In this case, the only exception to the section 21(1) exemption which could apply is section 21(1)(f). The Ministry has cited the presumption of an unjustified invasion of privacy at 21(3)(b) to support its position that section 21(1)(f) does not apply. Those sections read:

(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (b) 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:

. . . the exempt information was compiled and is 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. The Police Services Act establishes the OPP and provides for its composition, authority and jurisdiction. The duties of a police officer include investigating possible law violations, apprehending criminals and others who may lawfully be taken into custody and crime prevention.

The record at issue in the appeal documents a traffic-related investigation undertaken by a police officer with the . . . OPP on [specified date]. In the course of investigating such law enforcement matters, the OPP collects relevant personal information about the parties involved. This is necessary in order to come to specific conclusions as to whether there have been any violations of law. In this particular case, the affected party was charged with speeding contrary to section 128 of the Highway Traffic Act. The potentially responsive record at issue is identifiable as part of an OPP investigation into a violation of law. The Ministry submits that disclosure of this record would constitute an unjustified invasion of the affected person's personal privacy in accordance with section 21(3)(b).

The Ministry submits that none of the circumstances outlined in section 21(4) of the Act would operate to rebut the presumption of an unjustified invasion of personal privacy as established under section 21(3)(b) of the Act . . .

The appellants make no submissions on the application of the section 21(3)(b) presumption.

In Order MO-1192, Adjudicator Laurel Cropley stated, in the context of a request for police records concerning an alleged assault:

The Police indicate that the personal information pertaining to the suspect which is contained in the records was compiled as part of a law enforcement investigation into an alleged assault at a high school. The Police state further that the occurrence report consists of the facts in the case and the manner in which the officer concluded his investigation. Therefore, the Police submit that, since the personal information pertaining to individuals other than the appellant relates to records compiled as part of an investigation into an assault, the disclosure of the personal information is presumed to be an unjustified invasion of their personal privacy.

The appellant submits that since the Police made a judgment call not to lay charges against the suspect, they have not established the application of the presumption in section 14(3)(b).

I am satisfied that the Police investigated an alleged assault on the appellant at the named high school and that the investigation was conducted with a view to determining whether criminal charges were warranted. Accordingly, I find that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law and its disclosure would constitute a presumed unjustified invasion of personal privacy. The presumption may still apply, even if, as in the present case, no charges were laid (Orders P-223, P_237 and P_1225). As I indicated above, once a determination has been made that the presumption in section 14(3)(b) applies, it cannot be rebutted by factors in section 14(2). Therefore, even if I were to find that section 14(2)(d) applies in the circumstances, it would not be sufficient to rebut the presumption in section 14(3)(b). I have considered section 14(4) and find that it does not apply in the circumstances of this appeal.

In my view, the principles articulated by Adjudicator Cropley in Order MO-1192 are applicable here. Although the appellants seek only the affected person's name, in the circumstances, that information clearly was compiled and is identifiable as part of an investigation into a possible violation of law, in this case section 128 of the Highway Traffic Act. Therefore, the section 21(3)(b) presumption of an unjustified invasion of personal privacy applies to the requested information. Since none of the exceptions under section 21(4) applies, the information is exempt under section 21(1). In the circumstances, it is not necessary for me to consider the application of any of the factors weighing either for or against disclosure under section 21(2).

I understand the appellants' desire to obtain the identity of the affected person. However, in the circumstances of this appeal, where a presumed unjustified invasion of personal privacy has been established under section 21(3), the Divisional Court's decision in John Doe indicates that the factors favouring disclosure under section 21(2) cannot overcome the presumption.

I note that on the issue of alternative methods of gaining access to personal information of an unidentified individual for the purpose of commencing or maintaining a civil action against the individual, Adjudicator Laurel Cropley in her Order M-1146 made the following comments which the appellants may find useful:

I will now consider the extent to which the dog owner's address may be available by other means. First, with regard to the court, I have reviewed the relevant provisions of the Rules of Civil Procedure. I have also taken into account court practices of the Ontario Court (General Division) with respect to the commencement of civil actions.

The appellant could commence an action against the dog owner by way of a statement of claim under rules 14.03 and 14.07, even in the absence of a defendant's address. While form 14A of the Rules of Civil Procedure indicates that a plaintiff should include the name and address of each defendant in the statement of claim, in practice, the registrar will issue a statement of claim without a defendant's address, or with an "address unknown" notation . . .

Once the claim is issued, the appellant, as plaintiff, could bring a motion under rule [30.10] for the production of the record in question from the Health Unit, in order to obtain the address . . .

These principles could apply where the name as well as the address of the potential defendant is unknown, by use of a pseudonym such as "John Doe" [see Randeno v. Standevan (1987), 61 O.R. (2d) 726 (H.C.), and Hogan v. Great Central Publishing Ltd. (1994), 16 O.R. (3d) 808 (Gen. Div.)].

ORDER

I uphold the Ministry's decision to deny access to the requested information on the basis of section 21(1) of the Act.

Original signed by _____
David Goodis
Senior Adjudicator

November 16, 1999