



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

ORDER PO-1692

Appeal PA-980270-1

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General (formerly the Ministry of the Solicitor General and Correctional Services) (the Ministry). The request was for access to the notes of three named Ontario Provincial Police (OPP) officers respecting a motor vehicle accident which occurred on October 16, 1997 at 8:40 pm on Highway 11 at White River Drive in Laurier Township. The appellant and her infant daughter were injured in the accident. The appellant's husband was killed in the accident.

The Ministry denied access to the notes pursuant to the following sections of the Act:

- law enforcement - sections 14(1)(a), (b) and (f), 14(2)(a) and 49(a)
- solicitor-client privilege - sections 19 and 49(a)
- invasion of privacy - sections 21 and 49(b)

The appellant appealed the Ministry's decision.

The appellant has confirmed that she is not her husband's personal representative or an executor of her husband's estate. Additionally, the appellant confirmed that her husband did not leave a will.

I sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from the Ministry. The Ministry has indicated in its representations that it is relying on sections 49(a), supported by sections 14(1)(f) and 19, and section 49(b), supported by section 21 of the Act. I have taken this statement to imply that the Ministry is no longer relying on sections 14(1)(a), 14(1)(b) and 14(2)(a) of the Act, and the application of these exemptions is no longer at issue in this appeal.

RECORDS:

The records at issue are the notes of three OPP officers as follows:

- 10 pages of notes of Police Constable from Burk's Falls
- 23 pages of notes of Police Sergeant from South Porcupine
- 21 pages of technical investigative notes of Police Constable from North Bay

ISSUES:

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 at issue contain the personal information of identifiable individuals which was gathered for the purposes of a criminal investigation by police resulting from a fatal motor vehicle accident.

Having reviewed the records, I find that they consist of recorded personal information about the appellant and her daughter, her deceased spouse, the drivers of the other vehicles, witnesses to the accident and other identifiable individuals. The records document the investigation conducted by the police into a fatal motor vehicle accident and as such, they contain information about the drivers and passengers in the vehicles, including the appellant and witnesses who provided information during the investigation. I find that the records contain the personal information of all of these individuals. The information which has been withheld consists of personal identifiers of the individuals involved and other personal information about them, such as date of birth, addresses and telephone numbers, injuries, family members and statements of their view of the events.

INVASION OF PRIVACY

Where a record contains the personal information of both the appellant and another individual, section 49(b) allows the Ministry to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** 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 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.

Section 21(3)(b) states that:

A disclosure of personal privacy is presumed to constitute an unjustified invasion of personal privacy if 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 indicates that the records document the investigation undertaken by the Burk's Falls Detachment of the OPP in response to the fatal motor vehicle accident involving the appellant and other identifiable individuals. The Ministry states further that, in the course of investigating the accident, the OPP interviewed the involved individuals and witnesses. The Ministry submits that it is necessary in such law enforcement investigations to collect large amounts of personal information in order to come to specific conclusions as to whether there have been any violations of law under the Criminal Code or the Highway Traffic Act. The Ministry states that in this particular case, one of the drivers involved in the accident was charged under the Criminal Code with criminal negligence causing death, three counts of impaired driving causing bodily harm and prohibited driving.

Based on the Ministry's representations and my review of the records, I am satisfied that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law and that its disclosure would constitute a presumed unjustified invasion of privacy under section 21(3)(b). Although small amounts of the information in the records relate directly to the appellant, they are so intertwined with the personal information of the other individuals identified and/or identifiable in the records that it is not possible to sever the appellant's personal information without disclosing that of other identifiable individuals. I am satisfied that the Ministry's exercise of discretion in withholding this information was made on proper considerations and the information is, therefore, exempt under section 49(b) of the Act.

Because of this finding, it is not necessary for me to consider the application of sections 14(1)(f), 19 or 49(a) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Adjudicator

July 5, 1999