



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-1764

Appeal PA-990327-1

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information concerning a particular incident described as follows:

We are the owners of [a described property]. The lot consists of 100 acres of farmland, a house, a bankbarn and a driveshed.

In the afternoon of June 22, 1999, I [named requester] burned household garbage on our said property in a contained and controlled fire. There was no danger to life or property.

At the time of this garbage burning the [named fire department] came to the place with three trucks, including a rescue truck and eight [men] to [extinguish] the fire.

The [named township] forwarded the bill from the fire department in the amount of \$900.00 to us to pay.

Wanting to know why the fire department dispatched three trucks and eight [men] to quench garbage burning, we contacted the [named fire department] and the [named Ontario Provincial Police (OPP) detachment] for information Y

[Named OPP officer] informed us further orally that the initial caller reported that the barn was Y on fire. That, of course, was a false alarm.

According to [named OPP officer], the name and the telephone number of the initial caller are on file with the [named OPP detachment].

For legal reasons it is important to us to know who the initial caller is.

We request therefore that the information the [OPP] has regarding this caller be forwarded to us.

The Ministry located a responsive record containing the name of the caller (the affected person) and advised the requesters that access to this information was denied on the basis of section 21 (“personal privacy”) of the Act. Specifically, the Ministry stated that it was relying on the “highly sensitive” factor at section 21(2)(f) and the presumption of an unjustified invasion of personal privacy at section 21(3)(b) (“personal information compiled and identifiable as part of a law enforcement investigation”).

The requesters (now 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/she consented to disclosure of his/her name to the appellants. The affected person stated that he/she did not so consent.

I initiated the inquiry by sending a Notice of Inquiry to the appellants seeking representations on issues in the appeal. After reviewing the appellants' representations, I decided that it was not necessary for me to seek representations from the Ministry.

RECORD:

The responsive record is an OPP complaint report. The only information at issue in this appeal is the name of the affected person in the report.

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:

Y [T]he disclosure of the name would not reveal other personal information about the individual. We do not require any other information besides the name Y

I do not accept the appellants' submissions. In the circumstances, given the nature of the request and the responsive record, disclosure of the name would reveal the fact that the affected person was the individual who made a call to the OPP about the fire. This clearly is information "about" the affected person, and thus qualifies as his/her personal information under paragraph (h) of the section 2(1) definition.

INVASION OF PRIVACY

Where a requester seeks personal information of another individual, section 21(1) of the Act prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (h) of section 21(1) applies. In the circumstances, only the exception at section 21(1)(f) could apply. That section reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

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 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. The Ministry has also cited the factor weighing against disclosure at section 21(2)(f). Those sections read:

(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;

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

The appellants submit:

Section 21(1)(f) applies in our case. The disclosure of the name does not constitute an unjustified invasion of the individual's personal privacy. The nature of Order PO-1728 does not relate to our issue. We believe that the personal information is relevant to a fair
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determination of rights as to our request. We cannot see that the information would be highly sensitive. With regard to section 21(3)(b), we believe that [disclosure of] the personal information is justified due to the fact that disclosure is necessary and required for our legal right to continue our investigation into the false alarm.

Our comments on Order MO-1179 and Order MO-1211 are as follows. Order MO-1179 describes the requester who was assaulted, wanting to know whether or not the involved individual was on probation at the time of the alleged incident. The requested information was not related to the incident. Giving that information would have been an unjustified invasion of the person's privacy. As to Order MO-1211, the appellant made a request for access to the whole contents of a fire report. This would have been a clear fact of personal privacy invasion. As stated above, we cannot see that information of the name and address we require would be an unjustified invasion of personal privacy. Again, we do not ask for any other personal information.

The appellants' representations raise the possible application of section 21(2)(d). That section reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

Assistant Commissioner Tom Mitchinson stated the test for the application of section 21(2)(d) in Order P-312 [upheld on judicial review in Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner) (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)]:

In my view, in order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

The appellants state that "... the personal information is relevant to a fair determination of rights as to our request." However, the appellants have not provided me with any information respecting an existing or contemplated proceeding to which the name of the affected person may be relevant. As a result, I find that section 21(2)(d) does not apply.

In addition, I find that there are no other relevant factors, either unlisted or listed under section 21(2), weighing in favour of disclosure.

Since I have found no applicable factors weighing in favour of disclosure, I find that the appellants have failed to demonstrate that disclosure of the affected person's name would not constitute an unjustified invasion of personal privacy under section 21(1)(f). Accordingly, the name is exempt under section 21(1). In the circumstances, it is not necessary for me to determine whether or not the section 21(2)(f) factor or the section 21(3)(b) presumption cited by the Ministry are applicable.

The appellants seek to distinguish Orders PO-1728, MO-1179 and MO-1211. In PO-1728, the section 21(3)(b) presumption applied, and therefore the information was found to be exempt under section 21. In MO-1179, as in this case, the appellant was not able to establish any factors weighing in favour of disclosure, and thus the municipal counterpart to the section 21 exemption was found to apply. In MO-1211, as in this case, the appellant failed to establish the application of the municipal counterpart to the section 21(2)(d) factor weighing in favour of disclosure, and the information also was found to be exempt. Although the circumstances of each of these cases were different from one another and from those here, the appellant has provided no basis for arriving at a different conclusion under section 21.

ORDER:

I uphold the Ministry's decision to withhold the name of the affected person in the record.

Original signed by: _____
David Goodis
Senior Adjudicator

_____ March 8, 2000