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

ORDER PO-1757

Appeal PA-990252-1

Ministry of the Solicitor General

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BACKGROUND:

The appellant's son died suddenly behind the wheel of his car in June 1995. The cause of his death appears to be undetermined at this time, although there have been several possible causes put forth following medical assessment.

NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of the Solicitor General (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of all officers' notes or reports relating to the "motor vehicle accident" on June 9, 1996 in which his son died.

The Ministry located responsive records and confirmed that the appellant was not seeking access to records of which he had already received copies. The Ministry attempted to contact four individuals (the affected persons) who were referred to in the records. As a result, one affected person consented to full disclosure of information, one consented to partial disclosure, one did not respond and one could not be located. The Ministry then granted partial access to the records. The Ministry denied access to the remaining records on the basis of the following sections of the Act:

- facilitate commission of unlawful act - section 14(1)(l);
- law enforcement report - section 14(2)(a);
- discretion to refuse requester's own information - section 49(a); and
- invasion of privacy - sections 49(b)/21(1)(f) with reference to sections 21(2)(f) (highly sensitive), 21(3)(a) (medical information) and (b) (compiled and identifiable as part of an investigation into a possible violation of law).

The appellant appealed the Ministry's decision.

During mediation, the appellant indicated that he had met with the Coroner and had received some information, however he still wishes to pursue access to the severed records. The appellant also confirmed that he was not seeking access to the records for the administration of his son's estate.

I sent a Notice of Inquiry to the Ministry and the appellant. I have received representations from both parties. In its representations, the Ministry indicates that it has withdrawn its reliance on the exemption in section 14(2)(a) of the Act. The appellant indicates in his representations that he is not pursuing access to the ten-codes which are contained in the police officers' notebooks. The Ministry has claimed the exemption in section 14(1)(l) for this information only. As a result, the exemptions in sections 14(1)(l), 14(2)(a) and 49(a) are no longer at issue in this appeal. In addition, section 14(1)(l) was the only exemption claimed on page 12 of the OPP officers' notes. Accordingly, this page is no longer at issue in this appeal.

RECORDS:

The records at issue consist of:

- a motor vehicle accident statement;
- portions of pages 2, 4, 5 and 6 of an OPP sudden death report; and
- portions of three OPP officers' notebook entries relating to the accident.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined as recorded information about an identifiable individual.

The witness statement, the sudden death report and the police officers' notes all contain information pertaining to the "motor vehicle accident" in which the appellant's son died. The sudden death report and notebook entries record the details of the involvement of the police who attended at the scene of the accident. The witness statement contains the observations of an individual who witnessed the accident. As such, the records contain recorded information about the appellant's son, witnesses and other identifiable individuals and this qualifies as the personal information of all of these people. Only the officers' notebooks contain information about the appellant and these records contain his personal information as well.

It is apparent from the records that the witness was a stranger to the parties involved in the accident. Although a portion of the statement contains identifying information about this individual, such as name, address and telephone number, the body of this person's statement is severable from the identifying information. The statement itself contains no information which would serve to reveal the identity of the witness. In these circumstances, I find that the body of the witness statement does not contain the personal information of the witness and it is severable from that information which does so qualify pursuant to section 10(1) of the Act.

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.

Where, however, the record only contains the personal information of other individuals, section 21(1) of the Act prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In the circumstances, the only exception which could apply is section 21(1)(f) which 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 both these situations, 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. Section 21(4) refers to certain types of information whose disclosure 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 section 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 23 exemption.

The Ministry originally cited the presumptions in section 21(3)(a) and)(b) and the factor in section 21(2)(f) to support its position that section 21(1)(f) does not apply. These sections state:

> (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;
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
> >
> > (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;

However, it has submitted representations on the application of the presumption in section 21(3)(b) only.

Section 21(3)(b)

The Ministry states that the records at issue document the investigation undertaken by the Ontario Provincial Police (the OPP) into the circumstances of the June 9, 1996 motor vehicle accident involving the appellant's son. The Ministry indicates that in the course of their investigation, the OPP interviewed witnesses and other identifiable individuals. The Ministry notes that in such law enforcement investigations, large amounts of personal information may be collected as this is necessary in order to come to specific conclusions as to whether there have been any violations of law. The Ministry states that depending on the specific circumstances, motor vehicle accidents may lead to charges being laid under the Criminal Code or the Highway Traffic Act. The Ministry notes that in this case, no charges were laid.

I am satisfied that the personal information in the records was compiled and is identifiable as part of an investigation conducted by the OPP, which is an agency that has the function of enforcing the law, into the circumstances of the motor vehicle accident. I am also satisfied that the purpose of the investigation, in part, is to determine whether there has been a violation of law. Therefore, I find that disclosure of the personal information remaining at issue in this appeal would constitute a presumed unjustified invasion of personal privacy pursuant to section 21(3)(b) of the Act. Further, this presumption still applies, even if, as in the present case, no charges were laid (Orders P-223, P-237 and P-1225).

I find that none of the circumstances outlined in section 21(4) which would rebut a section 21(3) presumption are present in this appeal. The appellant has not raised the application of the public interest override and I find, in the circumstances of this appeal, that it does not apply.

In Order M-444, former Adjudicator John Higgins found that non-disclosure of information which the appellant in that case provided to the Metropolitan Toronto Police in the first place would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. This reasoning has been applied in a number of subsequent similar orders of this Office and has been extended to include, not only information which the appellant provided, but information which was obtained in the appellant's presence or of which the appellant is clearly aware (eg. MO-1196, P-1414 and PO-1679).

In my view, the reasoning in this line of orders is equally applicable to portions of the witness statement in the present appeal. In reviewing the portion of this record which does not contain the witness's personal information, I note that although perhaps worded differently, the information is essentially the same as that which has been provided to the appellant through the disclosure of other records or through information which was provided to him by the Coroner's office. I find that applying the section 21(3)(b) presumption to deny access to information which the appellant is clearly aware of would, according to the rules of statutory interpretation, lead to an "absurd result". Further, in my view, this reasoning would apply to the application of any of the provisions in sections 21(2) or (3) in the circumstances of this appeal.

On this basis, I find that the disclosure of the body of the witness statement would not constitute an unjustified invasion of personal privacy and the exception in section 21(1)(f) applies to this information. Accordingly, this portion of the record should be disclosed to the appellant.

In his representations, the appellant describes the tragic circumstances of his son's death and the impact this has had on him. He notes discrepancies in statements pertaining to the cause of death and states:

> I am seeking further medical clarification on this, and in this regard the series of events immediately preceding my son's death are of paramount importance ... in order to determine whether there were any direct or indirect causative factors.

The appellant concludes:

> This situation has been weighing heavily on my heart for over four years now. I am having a great deal of difficulty accepting the fact that an apparently healthy young man with no previous medical problems expired instantaneously. I very much want to bring closure to this tragic situation in order to get on with my life and at the same time to feel that I have done everything I could to ensure nothing was missed in the investigation into my son's untimely and somewhat mysterious demise.

I am sympathetic to the appellant's loss and appreciate his desire to obtain as much information pertaining to his son's death as he can. However, I note that the Ministry has provided him with a great deal of information in this regard. In addition, he will receive further information as a result of this order. The remaining personal information pertains to other individuals and was compiled and is identifiable as part of the OPP's investigation into the circumstances of his son's death. The protection of individual privacy is a fundamental purpose of the Act pursuant to section 1(b). Moreover, in my view, the inclusion of the presumption in section 21(3)(b) recognizes the heightened importance of protecting individual privacy in these circumstances. As a result, I find that the exemption in section 49(b) applies to the withheld information in the police officers' notebooks and that section 21(1) applies to the remaining personal information in the witness statement and the sudden death report.

ORDER:

1. I order the Ministry to provide the appellant with the body of the witness statement (on page one) by giving him a copy of this portion of the record on or before March 8, 2000.

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3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the portion of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: February 17, 2000

Laurel Cropley
Adjudicator