



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

ORDER PO-1899

Appeal PA-000215-1

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

The appellant, a lawyer representing the family of a deceased individual (the deceased) wrote to the Ministry of the Solicitor General (the Ministry) seeking access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to records held by the Ontario Provincial Police (the OPP) relating to an accident which resulted in the death of the deceased. Specifically, the appellant sought:

. . . all relevant information and documentation relating to the motor vehicle accident in question, including relevant police reports, statements, and any other information or documentation you possess . . .

The Ministry located responsive records and denied access to them. The Ministry advised that it was denying access on the basis of the exemptions at section 49(a) in conjunction with section 14 (law enforcement), section 49(a) in conjunction with section 19 (solicitor-client privilege), as well as section 49(b) in conjunction with section 21 (personal privacy).

The appellant appealed the Ministry's decision to this office. In his letter of appeal, the appellant stated:

At a minimum we should be entitled to a "basic" police report advising generally of the circumstances of the accident. (Example: exact roadway, direction of travel, names and addresses of drivers, passengers etc., and apparent cause of the accident).

These are urgently required to protect civil proceedings.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the Ministry, which provided representations in response. I then sent the Notice of Inquiry, together with the non-confidential portions of the Ministry's representations, to the appellant. The appellant chose not to make representations in response.

RECORDS:

The records at issue include witness statements, police officers' notes, technical reports, Crown brief synopsis, search warrants, informations, Centre of Forensic Sciences records, medical records and photographs.

ISSUES:

PERSONAL INFORMATION

In order for section 49(b) in conjunction with section 21 to apply, the information in question must constitute "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 personal information relating to the accused and various witnesses to the events in question. The Ministry's representations also imply that the records contain some personal information of the appellants, the family of the deceased.

In my view, with certain exceptions described in the paragraph below, all of the records contain personal information relating to identifiable individuals, including the accused, various witnesses and the deceased. This information describes these individuals' involvement in the matter under investigation. In addition, the records include some minimal references to the appellants. As a result, I find that these records contain information which meets the section 2(1) definition of "personal information".

Certain records either do not contain information about an identifiable individual, or contain only small portions of personal information. These records include descriptions of the vehicle and the accident scene, and related documents. In addition, although these records also contain the names and other information of individuals, this information is clearly about them in their professional capacity, and therefore the definition does not apply (see Reconsideration Order R-980015 for a complete discussion on this issue). Based on the above, Records 25, 32, 95, 101, 104-106, 108-112, 114-117 and 121 do not contain any personal information and therefore cannot be exempt under section 49(b) of the *Act*. In addition, only portions of Records 55, 93-94, 96-97, 100, 103, 107, 119-120 and 122 contain personal information which may qualify for exemption under section 49(b).

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/UNJUSTIFIED INVASION OF OTHER INDIVIDUALS' 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, 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 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 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].

In this case, the Ministry has claimed the application of the presumption at section 21(3)(b) of the *Act*, which reads:

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 “all personal information contained in the record was compiled and is identifiable as part of an OPP investigation into a possible violation of law . . .” I accept this submission. It is clear from the face of the records and in the circumstances that the personal information in the records was compiled and is identifiable as part of an OPP investigation into a possible violation of the *Criminal Code* stemming from the accident. Therefore, the presumption of an unjustified invasion of personal privacy at section 21(3)(b) applies.

In addition, I find that in the circumstances it is not reasonably possible to sever the records that consist of personal information (that is, all records except Records 55, 93-94, 96-97, 100, 103, 107, 119-120 and 122) in order to provide non-exempt information. To do so would reveal only “disconnected snippets” or “worthless”, “meaningless” or “misleading” information [see Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)].

Although the records contain some minimal references to the appellants, these appear together with personal information of other individuals, which is also not reasonably severable.

To conclude, the records at issue qualify for exemption under section 49(b), since disclosure would constitute an unjustified invasion of the personal privacy of individuals other than the appellants. The only exceptions to this finding are the following: Records 25, 32, 95, 101, 104-106, 108-112, 114-117 and 121 in their entirety, since they contain no personal information; and certain portions of Records 55, 93-94, 96-97, 100, 103, 107, 119-120 and 122, since they contain only small portions of personal information.

LAW ENFORCEMENT

The Ministry claims that all of the records at issue qualify for exemption under sections 14(1)(f) and 14(2)(a). The only records remaining at issue, and for which I will consider the applicability of sections 14(1)(f) and 14(2)(a), are Records 25, 32, 95, 101, 104-106, 108-112, 114-117 and 121 in their entirety; and certain portions of 55, 93-94, 96-97, 100, 103, 107, 119-120 and 122. As I indicated above, these records include descriptions of the vehicle and the accident scene, and related documents. In addition, although some of these records contain personal

information, none contains any information relating to the appellants, and thus section 49(a) is not relevant.

Section 14(1)(f) reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

deprive a person of the right to a fair trial or impartial adjudication;

The Ministry submits:

Release of the OPP file would convey to the appellant (and anyone else he chooses to share the information with) confidential information about the nature and extent of the evidence that has been compiled by the OPP in connection with the fatal motor vehicle collision. Release of the information at issue might provide the accused or other involved parties with the opportunity to tamper with evidence, which may exist but may not be known to police at this time and subsequently prejudice a fair trial.

. . . [T]he release of the records at issue would seriously interfere with an ongoing matter, which is presently before the courts. Public dissemination of the information in the records, at this point in time, could lead to the suppression or destruction of evidence and could alert the suspect or others about the extent and nature of the evidence compiled by the OPP and hinder the prosecution of the suspect.

In the circumstances, I am satisfied that there is a reasonable expectation that premature disclosure of the records at issue, which contain evidence likely to be used at trial, could reasonably be expected to prejudice the right of the accused to a fair trial. This finding is consistent with other orders of this office in similar circumstances (see, for example, Orders P-1584, PO-1650, and PO-1710).

Because of my findings that the records are exempt under either section 49(b) or 14(1)(f), it is not necessary for me to consider whether any of the records are also exempt under section 14(2)(a) and/or 19 of the *Act*.

Once the trial in this matter has concluded, the Ministry may wish to reconsider its decision with respect to the information it has withheld under section 14 on its own initiative or in response to a new access request.

ORDER:

I uphold the Ministry's decision.

Original Signed By: _____ May 2, 2001
David Goodis
Senior Adjudicator