



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

# ORDER PO-1908

Appeal PA\_000295\_1

Ministry of the Solicitor General



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## **NATURE OF THE APPEAL:**

This is an appeal under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a decision of the Ministry of the Solicitor General (the Ministry). The requester sought access to “all relevant information and documentation relating to the motor vehicle accident in question, including the relevant police reports, statements, and any other information or documentation [in the custody of the Ministry]”.

The Ministry located nine pages of records responsive to the request including portions of the investigating officer’s notes, an interview statement, and two interview reports. The Ministry then sent a notice under section 28 of the *Act* to the individual who had provided the interview statement, but received no response. The Ministry granted access to some of the records, but withheld others on the basis of the following exemptions in the *Act*: section 49(a) in conjunction with section 14 (law enforcement), and section 49(b) in conjunction with section 21 (invasion of personal privacy). The Ministry also withheld portions of the records it believed were not relevant to the request.

The requester, now the appellant appealed the Ministry’s decision.

I initially sent the Ministry a Notice of Inquiry setting out the facts and issues in this appeal and received submissions in response. I then sent a Notice of Inquiry, together with the Ministry’s complete representations, to the appellant, who did not provide representations.

## **RECORDS:**

At issue are the undisclosed parts of four pages of a police officer’s notes, a one-page interview statement and a two-page interview report.

## **PRELIMINARY MATTER:**

### **Non-Responsive Records**

The Ministry submits that part of the information on page one of the police officer’s notes concerns police matters unrelated to the motor vehicle accident at issue and therefore this information is not reasonably relevant to the appellant’s request for information. After reviewing the entries marked as not being relevant to the request, I am satisfied that those parts of the record withheld by the Ministry are clearly not “relevant” or “responsive” to the appellant’s request for information concerning the particular motor vehicle accident.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The first issue to be determined is whether the record contains personal information, and if so, to whom that personal information relates.

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 personal information such as age, sex, family status, addresses, telephone numbers, medical history, and statements of individuals about the incident involving the appellant and other identifiable individuals. After reviewing the records, I find that they contain the personal information of the appellant and other individuals who were part of the police investigation into the motor vehicle accident.

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/FACILITATE THE COMMISSION OF AN UNLAWFUL ACT**

Under section 47(1) of the *Act*, individuals are given 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.

In this appeal, the Ministry has relied on section 49(a) to deny access to parts of the records. Under section 49(a) of the *Act*, an institution has the discretion to deny access to an individual's own personal information where the exemptions in sections 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information [my emphasis].

The Ministry claimed the application of the exemption in section 14(1)(l) in conjunction with section 49(a) to withhold an OPP message code, commonly known as a "ten code", from page one of the investigating officer's notes. Section 14(1)(l) provides:

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

facilitate the commission of an unlawful act or hamper the control of crime.

In its representations, the Ministry indicates that the "ten codes" are used by OPP officers in their radio communications with each other and their detachments and communication centres. It submits that release of the "ten codes" would compromise the effectiveness of police communications and possibly jeopardize the safety and security of OPP officers.

Previous orders of this office have consistently upheld the application of section 14(1)(l) or its municipal equivalent to "ten codes" (Orders M-757, PO-1877, and MO-1414). I accept the findings of these previous decisions and find that "ten codes" are properly exempt under section 49(a) of the *Act*.

### **INVASION OF PRIVACY**

Under section 49(b) of the *Act*, where a record contains the personal information of both the requester 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. The withheld portions of the police officer's notes and the one-page interview statement contain the personal

information of both the requester and other individuals. I will, therefore, apply the exemption under section 49(b) to these records.

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. The two-page interview report contains the personal information of only other individuals and I will therefore apply the section 21(1) exemption to this record. 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), (3) and (4) provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of 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 only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the *Act* 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 [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.)].

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 submits that the information contained in the records was compiled and is identifiable as part of an OPP investigation into a possible violation under the *Criminal Code* or the *Highway Traffic Act* with respect to a motor vehicle accident involving the appellant and other identifiable individuals. In this particular case, the Ministry indicates that no charges were laid by the OPP. The Ministry submits that disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy under section 21(3)(b). The Ministry further submits that none of the exceptions in section 21(4) applies in this case and that there is no compelling public interest supporting disclosure of the records.

Based on the Ministry's representations and my review of the records, I am satisfied that the requirements to establish an unjustified invasion of personal privacy under section 21(3)(b) have been met with respect to the withheld information in the records. The personal information in the records was clearly compiled and is identifiable as part of an investigation into a possible violation of law, specifically under the *Criminal Code* or the *Highway Traffic Act*. Previous orders have found that the presumption may still apply even if no charges are laid, as in this case (Orders P-223, P-237 and P-1225). In addition, I find that section 21(4) has no application here. Accordingly, I find that the withheld portions of the police officer's notes and the one-page interview statement are exempt under section 49(b).

As the two-page interview report contains only the personal information of individuals other than the appellant, this record is therefore exempt under section 21(1).

Because of these findings, it is not necessary for me to consider the application of section 21(3)(a) and section 21(2)(f) of the *Act*.

The Ministry submits that it considers each access request on an individual basis and reviews the information at issue to determine whether any exemptions to allow disclosure apply. In its exercise of discretion under section 49(b), the Ministry stated that it must be sensitive to the right to privacy of individuals who have been involved in any type of law enforcement investigation. It submits that it carefully reviewed the information and weighed the appellant's right of access to his own personal information. After reviewing the Ministry's representations in this regard, I am satisfied that the Ministry acted appropriately in exercising its discretion.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Dawn Maruno  
Adjudicator

\_\_\_\_\_ May 28, 2001