



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2047**

**Appeal PA-020022-1**

**Ministry of Public Safety and Security**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This appeal concerns a decision of the Ministry of Public Safety and Security (the Ministry) made pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requesters (now the appellants) had sought access to a copy of an Ontario Provincial Police (OPP) report with respect to a specified incident. By way of background, this incident relates to a complaint concerning a dead dog found on the appellants' property. The owner of the dog (the named complainant) is an affected person. A second affected person is a suspect in a police investigation of the incident. The appellants are the neighbours of the two affected persons.

In its decision, the Ministry granted partial access to the records at issue. The Ministry denied access to the severed parts of the records, pursuant to section 49(a) in conjunction with section 14(2)(a) (law enforcement report) and section 49(b) in conjunction with sections 21(2)(f) and 21(3)(b) (personal privacy).

The appellants appealed the Ministry's decision.

The parties were unable to reach a resolution during the mediation stage of the appeal process.

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 Ministry's complete representations, to the appellants. The appellants did not submit representations.

## **RECORDS:**

There are two records at issue in this appeal, comprised of four pages:

- General Occurrence Report (3 pages);
- Supplementary Occurrence Report (1 page).

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to assess whether section 49(b) in conjunction with section 21 apply to deny the appellant access to the records at issue, I must first determine whether the records contain personal information, and to whom that personal information relates.

Under section 2(1) of the *Act*, "personal information" is defined as recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

Based on my review of the records, there is no doubt that they contain the personal information of the appellants and the two affected persons. The information contained in the records reveals

the details of an OPP investigation into a complaint filed by the named complainant. The nature of the complaint is detailed, the name and residence location of the second affected person who is a suspect in the police investigation are provided, and the details relating to a dispute between the complainant and the appellants are discussed.

## **INVASION OF PRIVACY**

### **Introduction**

Section 47(1) of the *Act* gives individuals a right of access to their own personal information. Section 49 provides certain exceptions to the section 47(1) right of access. Under section 49(b) of the *Act*, where a record contains the personal information of both the appellant and other individuals, the institution has the discretion to deny the appellant access to that information if it determines that the disclosure of the 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 (see Order M-1146).

Sections 21(2) and (3) 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 to consider in making this determination. Section 21(3) lists types of information whose disclosure is **presumed** to constitute an unjustified invasion of personal privacy.

In *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767, the Divisional Court 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).

### **Section 21(3)(b)**

The Ministry claims the application of section 21(3)(b) and makes the following submissions in support of its position:

Section 21(3) of the *Act* outlines when the disclosure of personal information is presumed to be an invasion of privacy and specifically, Section 21(3)[(b)] states:

(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;

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, in accordance with 21(3)(b) of the *Act*.

The *Police Services Act* establishes the OPP and provides for its composition, authority and jurisdiction. Section 19 sets out the responsibilities of the OPP which in part include:

- Providing Police Services in respect of the parts of Ontario that do not have municipal forces other than by-law enforcement officers.
- Maintaining investigative services to assist municipal police forces on the Solicitor General's Direction or at the Crown Attorney's request.

The entire record at issue was compiled during the course of a law enforcement investigation. The OPP was requested to conduct an investigation to determine if any offences contrary to the *Criminal Code*, or other statute, were committed. As a result of this investigation personal information was gathered in order to determine [if] any violation of the law occurred. The OPP is an agency, which has the function of enforcing and regulating compliance with a law.

While the appellants did not submit written representations, the appellants advised this office that they are relying upon, for the purposes of this inquiry, information provided during the mediation stage of this appeal and, in particular, a letter from them to this office dated April 1, 2002. The appellants advised this office that they are attempting to recover money paid for the erection of a fence between neighbouring properties that has not been completed. In the April 1<sup>st</sup> letter the appellants state:

As we are still fighting for the return of the money for the incompletd fence and the cost of the trees that were removed from our property we applied for a copy of the police report...

...[W]e need the information we have requested because the only recourse we have for getting our money back is to take this matter to court...

I find that all of the personal information contained in the records at issue was clearly compiled and is identifiable as part of an investigation into a possible violation of law, specifically the *Criminal Code*. Therefore, pursuant to section 21(3)(b), it must be presumed that disclosing the personal information of the named complainant and the named suspect in the police investigation, whose personal information was compiled in this context, would constitute an unjustified invasion of their privacy. Because the personal information falls within the scope of one of the section 21(3) presumptions, *John Doe, supra*, precludes me from considering the application of the factors weighing for or against disclosure under section 21(2). In other words,

having found that section 21(3)(b) applies, I cannot consider whether any of the circumstances set out in section 21(2) might justify disclosure of the information in this case.

With respect to the severed parts of the records that contain the appellant's personal information, they also contain the personal information of other individuals, specifically the named complainant and the named suspect in the police investigation. 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. In the circumstances of this case, I find that disclosing the appellants' personal information would constitute an unjustified invasion of the personal privacy of these other individuals, and that the severed parts of the records qualify for exemption under section 49(b).

### **Exercise of Discretion**

The Ministry made the following representations regarding the exercise of its discretion under section 49(b) of the *Act*:

The Ministry is mindful of the right of persons to seek access to records held by institutions and the requirements that the [Act] place on institutions in determining the release of that information.

The Ministry, however, submits that the release of any part of the record at issue would result in the various harms outlined and therefore the record cannot be reasonably severed in these circumstances.

After careful consideration of all of the materials before me, I find nothing improper in the Ministry's exercise of discretion in withholding the severed parts of the records from the appellants.

In light of my decision under section 49(b) I do not need to consider the application of section 49(a) in conjunction with section 14(2)(a) of the *Act*.

### **ORDER:**

I uphold the decision of the Ministry to deny access to the severed parts of the records at issue on the basis of section 49(b) of the *Act*.

Original signed by: \_\_\_\_\_  
Bernard Morrow  
Adjudicator

September 19, 2002 \_\_\_\_\_