



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2137**

**Appeal PA-020297-1**

**Ministry of Public Safety and Security**

## **NATURE OF THE APPEAL:**

The Ministry of Public Safety and Security (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to a copy of a specific occurrence report prepared by members of the Ontario Provincial Police (the OPP) with respect to an incident involving the requester which took place on a specified date.

The Ministry located the requested record and granted access to it, in part. Access to the remaining portions of the occurrence report was denied pursuant to section 49(a), with reference to section 14(2)(a) (law enforcement) and section 49(b) (invasion of privacy) of the *Act*, with reference to the presumptions in sections 21(3)(a) (medical information) and (b) (compiled as part of a law enforcement investigation) and the consideration listed in section 21(2)(f) (highly sensitive information).

The requester, now the appellant, appealed the decision to deny access to the undisclosed portions of the record. As mediation of the appeal was not successful, the appeal was moved to the adjudication stage of the appeal process. I provided the Ministry with a Notice of Inquiry, seeking its representations on the issues remaining in this appeal. The Ministry made submissions which were shared, in their entirety, with the appellant. The Ministry indicated that it was no longer relying on the provisions of sections 14(2)(a) and 49(a) with respect to the undisclosed portions of the record at issue. Accordingly, the application of these exemptions is no longer at issue in this appeal. The appellant did not provide any submissions in response to the Notice of Inquiry.

## **RECORDS:**

The record at issue consists of the undisclosed portions of a three-page occurrence report.

## **DISCUSSION:**

### **PERSONAL INFORMATION/INVASION OF PRIVACY**

The personal privacy exemption in section 49(b) applies only to information which qualifies as "personal information", as defined in 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 record contains the personal information of the appellant and other identifiable individuals. It submits that the remaining portion of the record includes information relating to the age, sex and marital status of these individuals (paragraph a), information relating to their medical, psychiatric or psychological history (paragraph b), the addresses of the individuals (paragraph d), the personal opinions or views of an individual (paragraph e), the views or opinions of another person about an individual (paragraph g) and the individuals' names along with other information about them (paragraph h).

Based on my review of the contents of the record, I am satisfied that it contains the personal information of the appellant and other identifiable individuals within the meaning of the definition of that term in section 2(1).

Under section 49(b) of the *Act*, where a record contains the personal information of both a requester and other individuals and an 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.

Section 49(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the institution the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 49(b) applies, sections 21(2), (3) and (4) 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 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 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. [See Order PO-1764]

If none of the presumptions in section 21(3) applies, the institution must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

In her letter of appeal, the appellant indicates that she is seeking access to the undisclosed portions of the record in order to pursue a possible civil proceeding. This raises the possible application of the consideration listed in section 21(2)(d) of the *Act*.

The Ministry submits that the undisclosed portions of the record contain information which falls within the ambit of the presumptions in sections 21(3)(a) and (b) of the *Act* and that the consideration listed in section 21(2)(f) applies to this information. 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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
  - ...
  - (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;

#### **Application of Section 21(3)(a) to the Record**

The Ministry submits that the record contains information which qualifies as “medical information relating to an identifiable individual” and that the disclosure of this information would constitute an unjustified invasion of the personal privacy of this individual.

Based on my review of the record, I find that certain portions contain information which “relates to a medical, psychiatric or psychological history” of an individual. As a result, I find that the disclosure of these portions of the record is presumed to constitute an unjustified invasion of the personal privacy of this individual under section 21(3)(a).

#### **Application of Section 21(3)(b) to the Record**

The Ministry submits that:

. . . the personal information remaining at issue consists of highly sensitive personal information that was compiled and is identifiable as part of an OPP investigation into a possible violation of law.

...

The exempt information documents the criminal investigation undertaken by the OPP in response to an incident involving the appellant and other identifiable individuals. In the course of the investigation, the OPP interviewed witnesses and other identifiable individuals. The Ministry submits that the exempt personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

Based on my review of the contents of the undisclosed portion of the record, I am satisfied that the Ministry has provided an evidentiary basis for the application of the presumption in section 21(3)(b) to this document. I find, accordingly, that the disclosure of its contents is presumed to constitute an unjustified invasion of the personal privacy of individuals other than the appellant.

As noted above, the application of the presumptions in section 21(3) cannot be overcome by a factor or combination of factors under section 21(2). In the present appeal, the exceptions in section 21(4) do not apply and the appellant has not raised the possible application of section 23 to the record. Accordingly, I find that the undisclosed information in the record at issue is exempt from disclosure under section 49(b).

### **Exercise of Discretion**

The section 49(b) exemption is discretionary and permits the Ministry to disclose information, despite the fact that it could be withheld. On appeal, this office may review the Ministry's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so (Orders PO-2129-F and MO-1629).

Upon review of all of the circumstances surrounding this appeal and the Ministry's representations on the manner in which it exercised its discretion, I am satisfied that the Ministry has not erred in the exercise of its discretion not to disclose the remaining portions of the record under section 49(b).

### **ORDER:**

I uphold the Ministry decision to deny access to the undisclosed portions of the record.

Original signed by:  
Donald Hale  
Adjudicator

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April 11, 2003