



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2133

Appeal PA-020111-1

Ministry of Correctional Services



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:

The Ministry of Correctional Services, now the Ministry of Public Safety and Security (the Ministry), received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

Any investigation reports or reviews done by the Ontario Board of Parole or Probation and Parole Services regarding the case of [a named offender].

The Ontario Parole and Earned Release Board (formerly the Ontario Board of Parole) (the OPERB) is an adjudicative agency with independent decision-making authority for parole decisions and unescorted temporary absence decisions of 72 hours or longer for adult inmates serving sentences in provincial correctional institutions.

The Ministry identified 3 responsive records, and denied access to all of them, in their entirety, based on the exemptions in sections 14(2)(d) (law enforcement) and 21(personal privacy) of the *Act*. The Ministry relied on the factors and presumptions in sections 21(2)(h), 21(3)(a), (b), (d) and (g) in support of the section 21 exemption claim.

The requester (now the appellant) appealed the Ministry's decision.

During mediation, the appellant raised the possible application of the public interest override in section 23 of the *Act*.

Mediation did not resolve this appeal so it was transferred to the adjudication stage. The Ministry provided representations on the relevant issues, which were shared with the appellant. The responding representations from the appellant were shared with the Ministry, and the Ministry provided reply representations.

In its initial representations, the Ministry withdrew the section 14(2)(d) exemption claim. Therefore section 21 is the only exemption that remains at issue in this appeal.

RECORDS:

There are 3 responsive records, all of which involve the offender identified in the appellant's request:

- Record 1 - 18-page "Hearing Review Audit" of a parole hearing prepared by audit staff of the Ministry
- Record 2 - 1-page "Post Suspension Report" prepared by a Probation and Parole Officer of the Ministry
- Record 3 - 3-page "Probation File Review" prepared by an Area Manager of the Ministry's Probation and Parole Program

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

In order to qualify for exemption under section 21, a record must contain “personal information”, as defined in section 2(1) of the *Act*.

The appellant explains in its representations that it is an organization representing victims of crime. According to the appellant, it has requested and received information similar in nature to the records at issue in this appeal from the federal Department of Correctional Services, with personal information severed. It states:

Let us be clear - we are not interested in personal information about [the named offender], but rather with the system that dealt with him and how it worked or did not work. This has always been our focus when we make inquiries of the federal system, as it was with this request.

The appellant goes on its representations:

... I would not be surprised if [the records] did contain some personal information about [the named offender]. The reports we receive from the federal system also contain personal information about the offender in question. Federal officials routinely review the material and exempt any personal information about the offender or other individuals who are mentioned in the report. Once again, we are not concerned with individuals (i.e. the name of a probation officer, personal information about [the named offender]), but with how the system dealt with this individual.

As for the victim’s name, we would expect (and ask) this would be exempted from any information released.

As for staff and parole board members, it is our position that these names can be exempted as well. It is not our intention to target any individuals. In fact, we are not concerned at all with who these individuals are. In the federal system, their names are routinely exempted. It is our position that the public has a right to scrutinize the performance of the corrections and parole system, which means how (unnamed) staff and board members carried out their duties (again, which is done in the federal system).

In light of the appellant’s position, I find that personal information of the named offender and any victims, as well as the names of Ministry probation and parole staff fall outside the scope of the appellant’s request and need not be considered further in this order. No OPERB member is named in any of the records.

The Ministry’s representations on the “personal information” issue relate primarily to information described in the preceding paragraph.

As far as the OPERB members and Ministry employees are concerned, the Ministry submits:

... the responsive records also contain personal information about the OPERB members responsible for the decision to release the named offender on parole and the Ministry Probation and Parole Officer responsible for supervising the named offender while he was on parole. As evidenced by the content of the responsive records, the review into the circumstances relating to the release and supervision of the named offender included an evaluation of the manner in which the OPERB members and the Probation and Parole Officer carried out their responsibilities.

As a result of the foregoing, the Ministry submits that the records at issue should be considered these individual's personal information in the circumstances of the appellant's request.

The Ministry also refers to Orders P-721, in which former Assistant Commissioner Irwin Glasberg stated:

... Previous orders have held that information about an employee does not constitute that individual's personal information where the information relates to the individual's employment responsibilities or position. Where, however, the information involves an evaluation of the employee's performance or an investigation into his or her conduct. These references are considered to be the individual's personal information.

The records at issue in this appeal were created as part of the regular documentation and audit processes put in place by the Ministry to ensure the integrity of the parole system. With the exception of the final paragraph on page 17 of Record 1, I find the records do not constitute an evaluation of any employee or OPERB member's performance, and none of the records were created as a result of an investigation into any individual's conduct. The Ministry has provided no evidence to suggest that any subsequent performance or employment-related actions were taken as a consequence of the audit review. Although the identities of the OPERB members and Probation and Parole Officer may be ascertainable as a result of their involvement in the case, any such information, if identifiable, would be associated with these individuals in their professional and not their personal capacities.

The final paragraph on page 17 is different from the rest of the record, in that it does not relate to the case that is the subject of the audit. Although it doesn't name any individual, this paragraph contains the author's general evaluation of the performance of one of the OPERB members involved in the case, including recommendations that relate to this member's employment status. In the particular circumstances of this case, and in light of the appellant's position that it is seeking access to how the OPERB members carried out their duties in this case and does not want to target any particular individual or to obtain any personal information contained in the records, I find that this paragraph can be excluded from the scope of the request.

Once the records have been severed to remove the types of personal information identified by the appellant as falling outside the scope of the request, I find that the remaining information does

not qualify as “personal information” as defined in section 2(1), and therefore cannot qualify for exemption under section 21(1) of the *Act*.

Because no other exemptions have been claimed for the records, they should be severed and disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose the records to the appellant, subject to the severance of all “personal information”, by **April 14, 2003**. I have attached a highlighted version of the records with the copy of this order sent to the Ministry that identifies the portions that should be severed and **not** disclosed.
2. In order to verify compliance with Provision 1 of this order, I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant in accordance with Provision 1.

Original signed by:
Tom Mitchinson
Assistant Commissioner

March 24, 2003