



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1841

Appeal PA-990396-1

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

The appellant 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 from the North Grey Detachment of the Ontario Provincial Police (OPP) relating to “the Durham & District Fire Board inquiry which was initiated by Durham Township, in the County of Grey.”

The Ministry located responsive records and granted access to a press release only. The Ministry advised that it was denying access to the remaining 31 pages of records on the basis of the exemptions at sections 19 (solicitor-client privilege) and 21 (personal privacy) of the *Act*.

The appellant appealed the Ministry’s decision to this office. In her letter of appeal, the appellant stated that, in her view, the records could be severed in such a way that disclosure would not breach personal privacy or solicitor-client privilege, but the substance of the records could be revealed. The appellant also stated that she believes more responsive records should exist, in addition to those identified by the Ministry.

During the mediation stage of the appeal, the Ministry contacted the author of one of the requested records, a letter dated December 19, 1996 (pages 27-30), to determine whether he consented to the disclosure of this record. The affected person advised the Ministry that he objected to its disclosure.

Also during the mediation stage of the appeal, the appellant determined that she was already in possession of a one page letter from the OPP to the Clerk of the Town of Durham dated December 1996 (page 31) and that, therefore, she was no longer seeking access to this record.

In addition, during this stage of the appeal, the Ministry agreed to disclose copies of two business cards of two OPP officers which appear on pages 1 and 12-19. As a result, only pages 2 through 30 (with the exception of the business card portions of pages 12-19) remain at issue in this appeal.

I sent a Notice of Inquiry setting out the issues in this appeal to the Ministry. I then sent the non-confidential portions of the Ministry’s representations, together with a Notice of Inquiry, to the appellant. The appellant submitted representations in response.

In its representations, the Ministry indicated that it was no longer relying on the solicitor-client privilege exemption at section 19. As a result, I will not consider the application of this exemption to the records.

RECORDS:

The records at issue consist of handwritten notes (pages 2-19), two interview reports (pages 21-26) and a letter, (pages 27-30) totalling 29 pages.

DISCUSSION:

PERSONAL INFORMATION

In order for the section 21 personal privacy exemption to apply, the information in question must qualify as “personal information”. Under section 2(1) of the *Act*, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

The appellant states that she is not interested in obtaining any personal information, but rather information about the “scope and extent” of the OPP investigation. The appellant argues that personal identifiers can be removed from the records so that disclosure will not invade any individual’s privacy.

The Ministry states:

The records, on face value, contain recorded information about identifiable individuals, other than the [appellant], in accordance with section 2(1) of the *Act*.

The records contain the personal information of identifiable individuals who were the subject of or questioned during the criminal investigation. Some records detail the views and opinions of witnesses, and individuals that were subject to this investigation. In addition, there are responsive records, which are comprised of police officers notes and various will say statements.

In my view, the records contain personal information of identifiable individuals, including the names of individual witnesses and subjects of the investigation, as well as other information about these individuals, including addresses, telephone numbers and information about their involvement in the events under investigation. On the other hand, once this information is removed, the remaining information does not constitute personal information. In some cases, the information is about individuals in their professional capacity, and thus does not qualify under the section 2(1) definition (see, for example, Reconsideration Order R-980015) and in other cases, the individuals in question cannot be identified, once certain information is removed.

As a result, only some of the information in the records may qualify for exemption under section 21.

INVASION OF PRIVACY

Section 21(1) of the *Act* prohibits an institution from disclosing personal information, unless one of the exceptions in paragraphs (a) through (f) applies. In the circumstances of this case, the only exception which could apply is section 21(1)(f), which permits disclosure of personal information where the disclosure would not constitute an unjustified invasion of personal privacy.

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 section 21(2) [Order P-1456, citing *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In this case, the Ministry has cited the presumption of an unjustified invasion of personal privacy at section 21(3)(b). That section reads:

A disclosure of personal information 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 appellant makes submissions on why the information in the records should be released, but makes no specific submissions on the applicability of the section 21(3)(b) presumption.

In my view, the personal information in the records was clearly compiled and is identifiable as part of an investigation into possible violations of law, in particular various provisions of the *Highway Traffic Act* and/or the *Criminal Code*. As a result, this information is exempt under section 21.

ORDER:

1. I uphold the Ministry's decision to withhold portions of the records as highlighted in the copy of the records provided to the Ministry with its copy of this order.
2. I order the Ministry to disclose the remaining, non-highlighted information in the records to the appellant no later than **January 17, 2001**, but not earlier than **January 11, 2001**.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the material sent to the appellant in accordance with provision 2 above.

Original signed by: _____
David Goodis
Senior Adjudicator

_____ December 8, 2000