

# **ORDER PO-2165**

**Appeal PA-020333-1**

**Ministry of Public Safety and Security**

## **NATURE OF THE APPEAL:**

An insurance adjuster representing two named parties and their insurer (now the appellant) made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the **Ministry of Public Safety and Security** (the Ministry) for access to copies of the investigating police officer's notes and copies of the driver's statements given to the officer at the scene of a particular motor vehicle accident.

After attempts to notify the drivers who provided statements, the Ministry granted partial access to the information. The Ministry denied access to the rest of the information on the basis of section 49(a) (discretion to deny requester's own information) in conjunction with section 14 (law enforcement) and on the basis of section 49(b) in conjunction with section 21 (unjustified invasion of another individual's personal privacy).

The appellant appealed the decision.

During mediation, the appellant indicated that he was no longer interested in obtaining the information exempted under section 49(a) in conjunction with section 14. The appellant also indicated that he did not want any information unconnected to the specific motor vehicle accident.

With respect to the statements given to the officer by the drivers at the scene of the accident, the appellant was informed that the Ministry had unsuccessfully attempted to obtain the consent of these individuals to the disclosure of their information. In the absence of such consent, the Ministry continued to withhold the information.

The parties could not resolve matters through mediation, so the appeal moved to the inquiry stage.

I sought representations from the Ministry first, which I shared in their entirety with the appellant. I then received representations from the appellant. I have carefully considered all representations.

## **RECORDS:**

Four records remain at issue in this appeal. They consist of the notes of the investigating police officer and the statements of three of the drivers involved in the motor vehicle accident.

## **CONCLUSION:**

The information the Ministry withheld from the appellant is exempt under the section 49(b) personal privacy exemption.

## **ANALYSIS:**

## **PERSONAL INFORMATION**

The first issue for me to determine is whether the records contain personal information and, if so, to whom that information relates. The term “personal information” is defined in section 2(1) of the *Act*, in part, 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 [paragraph (h)].

I have examined the records at issue in this appeal. I find that the records contain the personal information of the appellant and of other identifiable individuals, including such things as their

- ages
- names
- addresses
- telephone numbers
- other identifying numbers
- personal opinions or views

Hence, the information meets the definition of “personal information” set out in paragraphs (a), (c), (d), (e), and/or (h) of the section 2(1) definition.

## **UNJUSTIFIED INVASION OF ANOTHER INDIVIDUAL’S PERSONAL PRIVACY**

### **General principles**

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester’s right of access to his or her own personal information against the other individual’s right to protection of their privacy.

Sections 21(1) to (4) provide guidance in determining whether the “unjustified invasion of personal privacy” threshold under section 49(b) is met. The 49(b)/21 analysis proceeds as follows:

1. **Does the information fit within section 21(1)(a)-(e)?**

If so, the information is *not* exempt under section 49(b). If not, proceed to step 2.

2. **Does the information fit within section 21(4)(a)-(c)?**

If so, the information is *not* exempt under section 49(b). If not, proceed to step 3.

3. **Does the information fit within section 21(3)(a)-(h)?**

If so, the information qualifies for exemption under section 49(b), and the institution must exercise its discretion and decide whether or not to disclose it. If not, proceed to step 4.

4. **Would disclosure of the information constitute an unjustified invasion of another individual's privacy, taking into account any relevant factors listed in section 21(2), and any other relevant unlisted factors?**

If so, the information is exempt under section 49(b), and the institution must exercise its discretion and decide whether or not to disclose it. If not, the information is not exempt under section 49(b).

In this case, the Ministry relied on the "presumed unjustified invasion of personal privacy" in section 21(3)(b) of the *Act*, and the factor listed under section 21(2)(f) of the *Act*.

### **Ministry's Representations**

The Ministry asserts that the records were created or gathered for the purpose of investigating the accident to determine whether breaches of the *Highway Traffic Act*, *Criminal Code* or other statute occurred. The records created contain the personal information of identifiable individuals who were the subjects of the investigation. Charges under the *Highway Traffic Act* were subsequently laid. None of the individuals consented to the release of their personal information.

The Ministry submits that any personal information provided during the course of an investigation into possible violation of the law is sensitive due to the nature of the investigation. The statements were provided to the police in a candid and open manner and identified individuals who were the subjects of a police investigation. The release of the records could cause personal distress to the affected parties.

### **Appellant's Representations**

The appellant first argues that the information is not personal information. In the alternative, if the information is personal information, the appellant argues that the Ministry is precluded from withholding this information in this instance because the personal information has already been released to the appellant:

As noted, we do not feel that the drivers' statements qualify for exemption pursuant to the discretionary exemption provided by section 49(b) of the *Act*. The

Ministry has noted that they attempted to contact the three individuals concerned regarding the disclosure of their personal information, in accordance with Section 28(1) of the *Act*. No responses were received from two of the individuals and the Ministry's correspondence to the third individual was returned and marked by Canada Post Priority Courier as the individual having "moved". As such, the Ministry denied access to the information. We feel that the Ministry waived this right when they knowingly and willingly released personal information under section 2(1) of the *Act*. This is evidenced by the attached Occurrence Report. We have no information to substantiate that the Ministry retained permission from the individuals involved to release sensitive and personal information in the Occurrence Report. Accordingly, we do not feel that releasing their statements with respect to the accident circumstances, and any injuries that may have been sustained, is no further a violation of the privacy of the individuals involved that what has already been committed by the Ministry.

## **Findings**

### ***Sections 21(1) and (4)***

Clearly none of these provisions apply. Therefore, I will proceed to consider the application of the presumption claimed by the Ministry, section 21(3)(b).

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

Section 21(3)(b) reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

If a record contains personal information and that information was compiled during the course of an investigation and is identifiable as such, the presumption at 21(3)(b) applies, whether or not the investigation is complete (see Orders MO-1568, M-701, MO-1256, MO-2131).

I have examined the records at issue. I find that section 21(3)(b) applies to all of them. I find that these records were compiled and are identifiable as part of an OPP investigation into a motor vehicle accident, which investigation led to the laying of charges under the *Highway Traffic Act*.

Furthermore, the appellant's argument that the Ministry cannot rely on section 21(3)(b) because it has already disclosed the personal information of the other drivers is not sound. First, the personal information disclosed to the appellant in the Occurrence Report is not the same as the personal information contained in the records at issue. Second, the disclosure to the appellant of

the Occurrence Report, which contains some personal information, is not justification for the release of records compiled in the context of an investigation into a violation of law, even where those records might contain some of the same information as the Report. [Order MO-1568]

All of the records, therefore, qualify for exemption under section 49(b).

### ***Section 21(2) factors***

I also find that section 21(2)(f) of the *Act* applies to the statements made by the drivers because I am persuaded by the arguments of the Ministry that this type of personal information provided in this context is highly sensitive. I am not persuaded that any factors favouring disclosure under section 21(2) apply. Therefore, I conclude that disclosure of the statements of the drivers would constitute an unjustified invasion of personal privacy. [See Order PO-2131]

### **Severance**

In the circumstances, I am satisfied that the Ministry has done a reasonable job under section 10(2) of the *Act* in severing exempt information from the records and has disclosed as much information to the appellant as possible.

### **Exercise of discretion**

As indicated, section 49(b) is a discretionary exemption. Therefore, once it is determined that a record qualifies for exemption under this section, the Ministry must exercise its discretion in deciding whether or not to disclose it.

Taking into consideration the representations of the Ministry, I am not persuaded that the Ministry erred in the exercise of its discretion in this case.

### **Conclusion**

All of the information the Ministry withheld from the appellant qualifies for exemption under section 49(b). In addition, the Ministry did not err in exercising discretion under section 49(b).

### **ORDER:**

I uphold the decision of the Ministry.

Original Signed By: \_\_\_\_\_

Rosemary Muzzi  
Adjudicator

July 21, 2003 \_\_\_\_\_