



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER PO-2146**

## **Appeal PA-020176-1**

### **Ministry of Public Safety and Security**



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## **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 requester (now the appellant) had sought access to a copy of the police officer notes and any witness statements in relation to a motor vehicle accident.

The Ministry granted partial access to the responsive records. Part of the responsive information was withheld pursuant to section 49(a), and section 49(b) in conjunction with sections 21(2)(f) and 21(3)(b) (personal privacy) of the *Act*. The Ministry also indicated that some of the information was removed from the records as it was deemed to be not responsive to the request.

The appellant appealed the Ministry's decision.

During the course of mediation, the appellant's representative advised the mediator that the appellant took issue with the removal of non-responsive portions of the records. Accordingly, the issue of non-responsiveness of records was added as an issue in this appeal.

Also, the Ministry advised the mediator that it was not in fact relying on section 49(a) of the *Act* to withhold information. As a result, section 49(a) of the *Act* is not at issue in this appeal.

Following completion of the mediation stage, the file was moved to adjudication.

I first sent this Notice of Inquiry to the Ministry and two affected parties. The Ministry submitted representations in response; the affected parties did not respond. I then sent this Notice of Inquiry along with the Ministry's representations to the appellant for her response. The appellant submitted representations.

## **RECORDS:**

The information at issue in this appeal is contained in four pages of police officer notes (pages 1 to 4) and a witness statement (page 5). The Ministry withheld portions of pages 1 to 4, and all of page 5.

## **CONCLUSION:**

The withheld portions of the records are either exempt from disclosure or are not responsive to the appellant's request.

## **DISCUSSION:**

### **RESPONSIVENESS OF RECORD**

The Ministry claims that portions of the withheld information at pages 1 and 4 are non-responsive to the appellant's request.

Previous orders of this office have established that in order to be responsive, a record must be “reasonably related” to the request:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to a request. It is an integral part of any decision by a head. The record itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, “relevancy” must mean “responsiveness”. That is, by asking whether information is “relevant” to a request, one is really asking whether it is “responsive” to a request. While it is admittedly difficult to provide a precise definition of “relevancy” or “responsiveness”, I believe that the term describes anything that is reasonably related to the request [Order P-880; see also Order P-1051].

I invited the parties to submit representations on this issue. The Ministry submitted representations; the appellant did not.

The Ministry states:

Page 1 - contains administrative information related to the officer’s duties and deployment at the commencement of his tour of duty it does not relate to the [motor vehicle accident].

Page 4 - commencing at 1911 hours, contains information related to a separate investigation not related to the appellant’s incident.

On my review of the records and the Ministry’s representations, I accept that the portions of pages 1 and 4 identified by the Ministry as non-responsive are, in fact, not responsive to the appellant’s request.

## **PERSONAL INFORMATION**

As I have indicated, the Ministry relies on section 49(b) in conjunction with sections 21(2)(f) and 21(3)(b) to deny access. In order to assess whether these provisions apply to these records it is, first, necessary to 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, 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)].

The Ministry submits:

The records do contain the personal information of identifiable individuals who were the subject of or questioned during this investigation.

The Ministry submits that portions of the information contained in the records are recorded information about identifiable individuals, other than the requester, in accordance with section 2(1) of the Act.

The appellant states:

The appellant requests the name, address and telephone number of the individual simply for the purpose of interviewing the individual as to his or her recollection of events leading to the motor vehicle accident in which the appellant has sustained serious and permanent injuries.

Based on my review of the five pages of records and the parties' representations, I draw the following conclusions:

- four pages (pages 1 to 4) contain the appellant's personal information in relation to her involvement in a motor vehicle accident
- four pages (pages 1 to 4) contain the personal information of three affected parties, including the names and addresses of two individuals and one corporation and the observations of one of the two individuals
- one page (page 5) is a witness statement completed for the Ontario Provincial Police (OPP) by one of the named individuals

## **RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/INVASION OF OTHER INDIVIDUALS' PRIVACY**

### **Introduction**

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 exceptions to this general right of access.

Section 49(b) of the *Act* provides:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

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 this case I have determined that pages 1 to 4 of the records contain the personal information of both the requester and other individuals. Therefore, I will consider whether the disclosure of this personal information would be an unjustified invasion of the personal privacy of other individuals and is exempt from disclosure under section 49(b).

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. On appeal, I must be satisfied that disclosure *would* constitute an unjustified invasion of another individual's personal privacy (see Order M-1146).

Where, however, the record only contains the personal information of another individual (as is the case with page 5), and the release of this information would constitute an unjustified invasion of the personal privacy of that individual, section 21 of the *Act* prohibits an institution from releasing this information, unless one of the exemptions set out in that section applies. Accordingly, I will also consider whether the disclosure of page 5 would be an unjustified invasion of personal privacy under section 21.

In both these situations (where the records contain the personal information of the appellant and of others, and where the records contain the personal information of another individual only), 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 head to consider in making a determination as to 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(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.

With respect to section 21(3), 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 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. In other words, once section 21(3) is found to apply, the factors in section 21(2) cannot be resorted to argue in favour of disclosure.

## **Unjustified invasion of another individual's personal privacy**

### ***Introduction***

For all of the records under consideration, the Ministry has submitted that the presumption in section 21(3)(b) applies.

Section 21(3)(b) states:

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;

### ***Representations***

The Ministry submits that the personal information in the records was compiled by the OPP as part of an investigation into a possible violation of law as a result of a motor vehicle accident. While the Ministry does not expressly say so, it would appear from its submissions that its investigation was conducted under the *Highway Traffic Act* and the *Criminal Code*. The Ministry submits that in the course of investigating such law enforcement matters, the OPP collects relevant personal information about the parties involved in order to reach a conclusion about whether there have been any violations of law. In this case the Ministry indicates that no charges were laid.

In her representations the appellant does not specifically disagree with the Ministry's submissions regarding the OPP's role in conducting an investigation or the impact of section 21(3)(b) in denying access to personal information obtained during the course of an investigation into a possible violation of law. Rather, the appellant states:

The appellant requests the name, address and telephone number of the individual simply for the purpose of interviewing the individual as to his or her recollection of events leading to the motor vehicle accident in which the appellant has sustained serious and permanent injuries. The appellant wishes to determine whether or not the individual may provide an eyewitness account. Since the accident occurred nearly four years ago, it is imperative to interview the individual as soon as possible to preserve any recollections. The appellant is not requesting details of any criminal charges relating to the individual, unless such charges (if any) are related to causation of the said accident.

. . . . .

[The appellant's] request is not an invasion of privacy. That comments are candid and subjective in nature about the individual do not obviate a need to know about the details of the accident. In accordance with the *Rules of Civil Procedure* (Rule 30.1), the appellant and her counsel undertake to not use information obtained in this proceeding for any purposes other than those of the proceeding itself. There are two other defendants in the proceeding who are likely interested in knowing whether the individual was a witness to the accident.

In the alternative, the appellant submits that any invasion of privacy is justified in that the disclosure of information which may provide insight into the causation of the accident is of greater probative value than any prejudicial effect.

### ***Findings***

#### *Page 5*

Based on the submissions of the Ministry and my review of the records, I find that the personal information contained on page 5 of the records was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the *Highway Traffic Act* and/or the *Criminal Code*. The fact that quasi-criminal or criminal proceedings were not commenced does not have a bearing on the issue, since section 21(3)(b) only requires that there be an investigation into a possible violation of law (Order PO-1849). Therefore, I find that the section 21(3)(b) presumption of an unjustified invasion of personal privacy applies and, therefore, the personal information contained on page 5 is exempt under section 21.

In my discussion above, I referred to the decision in *John Doe*. While the appellant has not specifically raised the application of any of the factors in section 21(2), her representations strongly hint at the application of section 21(2)(d), suggesting that the information is relevant to a fair determination of the appellant's rights. I am, however, precluded from considering any of the factors weighing for or against disclosure under section 21(2), because of the *John Doe* decision and having found that section 21(3)(b) applies.

#### *Pages 1 to 4*

I also find that the personal information on pages 1 to 4 of the records was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the *Highway Traffic Act* and/or the *Criminal Code*. Under section 21(3)(b), the disclosure of this personal information is, therefore, deemed to constitute an unjustified invasion of the personal privacy of the individuals to whom that information relates. As a result, these records qualify for exemption under section 49(b) of the *Act*.

Again, having regard to this finding, I am precluded from considering the application of the factors under section 21(2) alluded to by the appellant.

***Exercise of discretion***

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

The Ministry submits that it has properly exercised its discretion in respect of the appellant's request. The Ministry states that in the circumstances of this request it has responded to the requester within the legislated requirements.

In the circumstances, I am not persuaded that the Ministry has erred in exercising its discretion.

***Severance***

Section 10(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt.

The Ministry submits that it is mindful of the right of persons to seek access to records held by institutions and the requirements of section 10(2) of the *Act*.

The appellant did not submit representations on severance.

The key question raised by section 10(2) is one of reasonableness. Where a record contains exempt information, section 10(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information. The Ministry has provided the appellant with full disclosure of her personal information. The remaining information relates to affected parties, which is exempt from disclosure. In my view, the Ministry has acted reasonably in severing pages 1 to 4 of the records.

**ORDER:**

I uphold the Ministry's decision to withhold portions of pages 1 to 4 and all of page 5 of the records.

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

\_\_\_\_\_ May 22, 2003