



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2171

Appeal PA-030047-1

Ministry of Public Safety and Security



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NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of Public Safety and Security (the Ministry), made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) sought access to a specified occurrence report of the Ontario Provincial Police (the OPP).

The Ministry located the record and denied access to it, relying on the exemptions in sections 49(a) and (b) of the *Act* (discretion to refuse access to requester's own information), in conjunction with the mandatory exemption in section 21(1) (unjustified invasion of personal privacy) and the discretionary exemption in section 14(1)(l) (facilitate commission of crime).

As mediation did not result in a resolution of the issues in this appeal, it was referred to me for adjudication.

After my initial review of the appeal, I decided to send a Notice of Inquiry to the appellant, initially, inviting his representations on the issues in dispute. The appellant has not provided any representations, and I find it unnecessary to seek the representations of the Ministry.

CONCLUSION:

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

DISCUSSION:

As I find that section 21(1) applies to exempt the record from disclosure, it is unnecessary to consider the application of section 14(1)(l).

PERSONAL INFORMATION/UNJUSTIFIED INVASION OF PERSONAL PRIVACY

The first question I must address is whether the record contains personal information, and so, of whom, for the answer to this question determines which sections of the *Act* may apply. In my Notice of Inquiry, I noted that on my review of the record, it did not appear to contain the personal information of the appellant. I confirm that finding here. As a result, the discretionary exemptions in sections 49(a) and (b) of the *Act* (permitting the Ministry to refuse access to the requester's own information) do not apply.

The record does contain the personal information of several individuals other than the appellant. One of these individuals reported an incident to the OPP, and the other individual was taken into custody as a result of the OPP responding to this report.

Where a requester seeks the personal information of other individuals, as in this case, section 21(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In this case, the only relevant part of section 21(1) is section 21(1)(f), which permits disclosure only where it "does not constitute an unjustified invasion of personal privacy."

Sections 21(2) and (3) provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. 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 21(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 in favour of disclosure.

Section 21(3)(b), on which the Ministry relies in this case, 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...

It is apparent from information contained in the record itself that the personal information of individuals identified in it was compiled as part of an investigation into a possible violation of law. The information was collected and recorded by an OPP officer as a result of an investigation of an incident. The OPP received a report of an incident, attended at the scene to investigate, and during the course of this investigation, the officer recorded his observations and actions. Although the investigation resulted in the laying of a charge, it should be noted that whether or not criminal proceedings ensue does not affect the applicability of the presumption in section 21(3)(b) (see Order P-242). The presumption only requires that there be an investigation into a "possible violation of law".

On the facts before me, the application of the presumption under section 21(3)(b) has been established. Further, none of the exceptions in section 21(4) applies to permit disclosure of the information.

ORDER:

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

Original signed by: _____
Sherry Liang
Adjudicator

_____ July 31, 2003