



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2261

Appeal PA-030269-1

Ministry of Public Safety and Security



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NATURE OF THE APPEAL:

The Ministry of Public Safety and Security (now the Ministry of Community Safety and Correctional Services) (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a specified incident report or the notes taken by a named Ontario Provincial Police officer responding to a call involving the requester on a specified date. The Ministry located the responsive records and denied access to them, claiming the application of the following exemptions contained in the *Act*:

- discretion to refuse requester's own information – section 49(a), taken in conjunction with section 14(1)(l) (facilitate commission of an unlawful act); and
- invasion of privacy – section 49(b), taken in conjunction with the consideration in section 21(2)(f) (highly sensitive information) and the presumption in section 21(3)(b) (information compiled as part of a law enforcement investigation)

The requester, now the appellant, appealed this decision to the Commissioner's office. During the mediation stage of the appeal, the appellant agreed to withdraw his appeal with respect to those portions of the records for which the Ministry had claimed sections 14(1)(l) and 49(a); as well as those portions which were not responsive to the request. Accordingly, these portions of the records are no longer at issue. Further mediation was not possible and the matter was moved to the adjudication stage of the appeal process.

I decided to seek the representations of the Ministry initially and received its submissions. I then provided the appellant with a Notice of Inquiry, along with a complete copy of the Ministry's representations. I did not receive any representations from the appellant.

RECORDS:

The records consist of the undisclosed portions of a one-page incident report and two pages of a police officer's notes.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

The first question I must address is whether the records contain personal information, and if so, to whom that information relates, for the answer to this question determines which sections of the *Act* may apply. The personal privacy exemption in section 49(b) applies only to information that qualifies as "personal information", as defined in section 2(1) of the *Act*. In situations where the records contain personal information relating to the appellant, the applicable exemption is found in section 49(b).

"Personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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)].

Based on my review of the records, I find that they contain the personal information of the appellant as well as that of one other individual.

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.

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.

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.

In determining whether the exemption in section 49(b) applies, 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 institution to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

In this appeal, the Ministry submits that the presumption in section 21(3)(b) applies. That section 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;

The Ministry submits that the personal information in the records was compiled and is identifiable as part of an OPP investigation into a possible violation of law. The records describe the investigation undertaken by the OPP with respect to an incident involving the appellant.

I accept the submissions of the Ministry, and find that the personal information in the records was compiled and is identifiable as part of an OPP investigation into a possible violation of the *Criminal Code*. The application of section 21(3)(b) is not dependent on whether charges are laid as the result of an investigation [Orders P-242 and PO-2254]. The presumption only requires that there be an investigation into a “possible violation of law”.

Because I have found that the presumption in section 21(3)(b) applies, the factors in section 21(2) cannot rebut its application [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. I am therefore satisfied that disclosure of the personal information in the records is presumed to constitute an unjustified invasion of the personal privacy of the individual to whom it relates.

As I have indicated above, section 49(b) gives an institution a discretion to refuse a requester’s own personal information where it determines that the disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy. This discretion may be exercised in favour of disclosure, or in favour of withholding the information. In this appeal, the Ministry has provided submissions on the reasons why it decided to withhold the information. I find no error in the manner in which the Ministry exercised its discretion.

Accordingly, I uphold the decision of Ministry to withhold the information at issue.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Donald Hale
Adjudicator

_____ April 15, 2004