



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2304**

**Appeal PA-030391-1**

**Ministry of Community Safety and Correctional Services**



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## **NATURE OF THE APPEAL:**

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 a copy of an incident report, together with copies of statements taken and the officer's notes, with respect to an accident which occurred in a parking lot. The requester's solicitor identified that his client and her children were struck by an automobile backing out of a parking spot.

The solicitor specified that he wished to obtain access, in particular, to the identity of the driver of the vehicle, including her name and address. The requester's solicitor also identified that this information was requested so that the driver of the vehicle could "be placed on notice in accordance with the provisions of the *Insurance Act*."

Upon receipt of the request, the Ministry notified three individuals of the request for their statements regarding the motor vehicle accident. One individual consented to the disclosure of her statement, one individual did not consent and the notice sent to the third individual was returned to the Ministry, as it was undeliverable.

The Ministry then issued a decision granting partial access to the records. Access was denied to portions of four records on the basis of the exemptions in sections 14(1)(l) (facilitate commission of unlawful act) and 49(a) (discretion to refuse requester's own information). Access to the remaining records was denied on the basis of the exemption in section 49(b) (invasion of privacy) with reference to the factor in section 21(2)(f) and the presumptions in sections 21(3)(b) and (d) of the Act. The Ministry also identified that some portions of the records were not responsive to the request.

The requester (now the appellant) through her solicitor appealed the Ministry's decision. In the letter of appeal, the appellant's solicitor stated that he was seeking the name, address and details of insurance of the driver of the vehicle that struck his client and her children.

Mediation did not resolve the appeal, and this file was transferred to the adjudication stage of the process. I sent a Notice of Inquiry to the Ministry, initially, and received representations in response. I then sent the Notice of Inquiry, together with a copy of the Ministry's representations, to the appellant. I did not receive representations from the appellant.

## **RECORDS:**

The information at issue in this appeal consists of the severed portions of the police officers' notes, and two witness statements which were withheld in their entirety.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, personal information is defined, in part, to mean recorded information about an identifiable individual, including any identifying number, symbol or other particular assigned to the individual (paragraph (c)), the address or telephone number of the individual (paragraph (d)), the personal opinions or views of that individual except where they

relate to another individual (paragraph (e)), the views or opinions of another individual about the individual (paragraph (g)) or 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 that the information remaining at issue contains the types of information set out in paragraphs (c), (d), (e), (g) and (h) of the definition of "personal information", and that it relates to the appellant and other identifiable individuals. These other individuals include the driver of the vehicle involved in the accident, who was the subject of the police investigation into the matter, and an individual who witnessed the accident.

I have reviewed the records remaining at issue and find that they contain information relating to the accident involving the appellant, and therefore contain the personal information of the appellant. I also find that the undisclosed portions of the police officer's notes on pages 5, 6, 7, and 11, and the two witness statements (pages 3 and 4) also contain the personal information of other identifiable individuals.

## **INVASION OF PRIVACY**

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 disclosure that limit this general right.

Under section 49(b) of the *Act*, where a record contains the personal information of both the requester and another individual, and disclosure of the information would constitute and "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 as the institution may exercise its discretion to disclose the information to the requester. I will review the Ministry's exercise of discretion under section 49(b) later in this order, after I have decided whether the exemption applies.

Sections 21(1) through (4) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of an individual's personal privacy under section 49(b). Sections 21(1)(a) through (e) provide exceptions to the personal privacy exemption; if any of these exceptions apply, the information cannot be exempt from disclosure under section 49(b).

Section 21(2) provides some criteria for determining whether the personal privacy exemption applies. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 21(3), it cannot be rebutted by either one or a combination of the factors set out in section 21(2). A section 21(3) presumption can be overcome, however, if the personal

information at issue is caught by section 21(4) or if the "compelling public interest" override at section 23 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

If none of the presumptions in section 21(3) applies, the institution must consider the factors listed in section 21(2), as well as all other relevant circumstances.

The Ministry relies on section 49(b) in conjunction with section 21 to support its denial of access to the records which contain the personal information of the appellant and other identifiable individuals, consisting of the undisclosed portions of the police officer's notes on pages 5, 6, 7, and 11, and the two witness statements (pages 3 and 4). More specifically, the Ministry relies on the "presumed unjustified invasion of personal privacy" at section 21(3)(b) and the factor favouring privacy protection at section 21(2)(f). In its representations, the Ministry advises that it is no longer relying on the presumption of an unjustified invasion found in section 21(3)(d) of the *Act*.

As identified above, the appellant did not provide representations in this appeal. In the earlier material provided to this office, the appellant identified that this information was requested so that the driver of the vehicle could "be placed on notice in accordance with the provisions of the *Insurance Act*." In doing so, the appellant appears to be referring to the factor in section 21(2)(d) in support of the position that this information should be disclosed.

Sections 21(2)(d) and (f) and 21(3)(b) read:

21 (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(f) the personal information is highly sensitive;

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(b) 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;

With respect to the section 21(3)(b) presumption, the Ministry identifies the responsibilities of the Ontario Provincial Police (OPP) under the *Police Service Act* (the *PSA*) and then states:

The information at issue in this appeal documents an investigation into an incident, which was undertaken by an OPP officer. In the course of investigating such law enforcement matters, the OPP collects relevant personal information about the parties involved. This is necessary in order to reach specific conclusions as to whether there have been any violations of the law.

The Ministry submits that all personal information contained in the record was compiled and is identifiable as part of an OPP investigation into a possible violation of the law.

As noted above, the records consist of portions of police officers' notebooks, and two witness statements.

In my view, all of the records which the Ministry claims qualify for exemption under section 49(b) were compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the disclosure of those portions of the records which contain the personal information of the appellant and other identifiable individuals (specifically, portions of the police officer's notes on pages 5, 6, 7, and 11, and the two witness statements comprising pages 3 and 4) is presumed to constitute an unjustified invasion of privacy under section 21(3)(b).

As set out above, once a presumption against disclosure has been established under section 21(3), it cannot be rebutted by either one or a combination of the factors set out in section 21(2). Furthermore, as identified by the Ministry, the presumption in section 21(3)(b) is not rebutted by section 21(4), nor do I find that the "compelling public interest" override at section 23 applies. I therefore find that disclosing the information contained in those portions of the records would constitute an unjustified invasion of personal privacy under section 49(b).

### **Exercise of Discretion**

The section 49(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. When an institution decides that this exemption is available to deny access, it must exercise its discretion. The exercise of discretion under this section involves a balancing principle. The institution must weigh the requester's right of access to his or her own personal information against the other 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, this office may review the Ministry's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so (Orders PO-2129-F and MO-1629).

Upon review of all of the circumstances surrounding this appeal and the Ministry's representations on the manner in which it exercised its discretion, I am satisfied that the Ministry has not erred in the exercise of its discretion not to disclose the portions of the records withheld under section 49(b).

**DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/FACILITATE COMMISSION OF AN UNLAWFUL ACT**

As set out above, section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

The Ministry has relied on section 49(a) to deny access to four undisclosed portions of the records which do not contain the personal information of any identifiable individuals other than the appellant (four severances found on pages 5, 7, 10 and 12 of the police officers' notes). Under section 49(a), an institution has the discretion to deny access to an individual's own personal information in instances where the exemption in section 14 would apply to the disclosure of that personal information.

The Ministry claims that section 14(1)(l) applies to the severed portions for which it is claimed, as these are the "ten-codes" in the police officers' notes. Section 14(1)(l) states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime.

The Ministry's representations state:

The Ministry submits that "ten-codes" are used by OPP officers in their radio communications with each other, the Detachments and Communications Centres. The Ministry further submits that release of the "ten-codes" would compromise the effectiveness of police communications and possibly jeopardize the safety and security of OPP officers. In Order PO-1665, Adjudicator Laurel Cropley found that "ten codes" were properly exempt under section 14(1)(l)....

The Ministry also refers to and relies on Orders M-757, PO-1877, and MO-1414 in support of its view that section 14(1)(l) applies to the police "ten codes".

Having reviewed the Ministry's representations and the previous orders referred to by the Ministry, and in the absence of representations from the appellant, I find that the "ten-codes" are properly exempt under section 14(1)(l). As Adjudicator Laurel Cropley stated in Order PO-1665:

... disclosure of the "ten-codes" would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.

Therefore, I find that the Ministry has properly applied section 14(1)(l) to this information. I am also satisfied that the Ministry has not erred in the exercise of its discretion not to disclose these portions of the records under section 49(a) of the *Act*.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ July 30, 2004