



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2281**

**Appeal PA-030002-2**

**Ministry of Public Safety and Security**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **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 any records containing information that relates to the requester covering the period from 1994 to the date of the request (July 16, 2002). The requester sought access to records pertaining to:

. . . any investigations or dialogue between O.P.P. branches, or officers/employees, any other Government Office/Branch or employees thereof (i.e. Crown Attorneys (Guelph or Waterloo), Corrections staff, etc.), any other Police Services (i.e.: R.C.M.P., Waterloo Regional, Guelph Police Service, etc.), Lawyers or anyone else not listed.

The Ministry located a number of responsive records and granted partial access to them. The Ministry denied access to the undisclosed records, or parts of records, relying on the exemptions contained in:

- section 49(a) (discretion to refuse requester's own information), taken in conjunction with sections 13(1) (advice or recommendation), 14(1)(c), 14(1)(e) and 14(1)(l) (law enforcement) and 19 (solicitor-client privilege);
- section 49(b) (invasion of privacy), with reference to the consideration in section 21(2)(f) (highly sensitive information);
- section 49(d) (danger to mental or physical health of the individual); and
- section 49(e) (information in correctional record supplied in confidence).

The Ministry further indicated that access to pages 469-481 was denied because section 65(6) operates to exclude these records from the *Act*. The Ministry stated also that access to records responsive to a portion of the request was denied as a search of the specified officer's notes indicated that there were no entries relating to the requester.

The requester, now the appellant, appealed the Ministry's decision.

During mediation, the Ministry prepared an Index of Records describing the records withheld and the exemptions applied to each and provided a copy to the appellant and this office. Upon receipt of the Index, the appellant indicated that he was no longer pursuing access to the police codes withheld under section 14(1)(l) and those portions of the records identified as being not related to the request. The appellant also agreed that the records identified as being duplicates of records being sought in other appeal files were not at issue. Because records identical to pages 61-325, 326-396 and 399-468 are also at issue in other appeals filed by the appellant, they are no longer at issue in this appeal. The appellant also indicated that he was no longer pursuing access to pages 57-60 and 398.

I initially sought and received the representations of the Ministry. The non-confidential portions of those representations were then shared with the appellant, along with a Notice of Inquiry. The appellant also provided representations in response to the Notice.

## **RECORDS:**

The records remaining at issue consist of the responsive portions of certain police officer's notebook entries at pages 13-43 and 46-56; along with pages 469 to 481, which are records relating to a public complaint brought by the appellant against three police officers.

## **DISCUSSION:**

### **LABOUR RELATIONS AND EMPLOYMENT RECORDS**

The Ministry submits that pages 469 to 481 are excluded from the *Act* due to the operation of section 65(6)1 which states:

Subject to subsection (7), this *Act* does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.

#### **General principles**

If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

The term "in relation to" in section 65(6) means "for the purpose of, as a result of, or substantially connected to" [Order P-1223].

The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship [Order PO-2157].

If section 65(6) applied at the time the records were collected, prepared, maintained or used, it does not cease to apply at a later date [*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507].

#### **Section 65(6)1: court or tribunal proceedings**

##### ***Introduction***

For section 65(6)1 to apply, the Ministry must establish that:

1. the record was collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; and
3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the institution.

***Parts one and two***

The Ministry submits that in 1996 the appellant filed a public complaint under the *Police Services Act* (the *PSA*) against three members of the Ontario Provincial Police (the OPP) Guelph Detachment and that pages 469 to 481 relate directly to the processing of that complaint by the OPP's Professional Standards Bureau and the Office of the Police Complaints Commissioner. It indicates that these records were "collected, prepared, used and maintained by the OPP, Professional Standards Bureau for the purposes of investigating complaints relating to the subject officers as required under the *Police Services Act*."

The Ministry further submits that the complaint resolution process represents a "proceeding" before "an other entity" for the purposes of section 65(6)1, relying on similar findings relating to disciplinary hearings under Part V of the *PSA* in Orders M-835, M-1186, MO-1280 and MO-1347.

Based on my review of pages 469 to 481 and the submissions of the Ministry, I find that they were collected, prepared, maintained and used by the OPP's Professional Standards Bureau in relation to anticipated disciplinary proceedings against the subject officers under Part V of the *PSA*. As a result, I find that the first two parts of the test under section 65(6)1 have been satisfied.

***Part three***

The Ministry also takes the position that "disciplinary hearings under Part V of the *PSA* relate to the employment of a person by the institution" for the purposes of section 65(6)1. It relies on the findings of Assistant Commissioner Tom Mitchinson in Order M-835 where he found that the penalties which follow the discipline of police officers "can only reasonably be characterized as employment related actions". The Ministry argues that the investigation of the appellant's complaint could have led to proceedings against the officers under Part V of the *PSA* and that, following the reasoning in Order M-835, these possible proceedings relate to the employment of the officers by the OPP, which forms part of the Ministry.

In my view, the Ministry has met its evidentiary onus and has established that the anticipated proceedings which form the subject matter of the records relate to the employment of the officers by the OPP.

Accordingly, I find that all three parts of the test under section 65(6)1 have been met and pages 469 to 481 of the records are excluded from the operation of the *Act*.

## **PERSONAL INFORMATION**

### **General principles**

The section 49 personal privacy exemption applies only to information that qualifies as “personal information”. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

### **“About”**

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in their professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

### **Findings**

I have reviewed those portions of the records remaining at issue and find that all of them contain information which qualifies as the “personal information” of the appellant, within the meaning of section 2(1). The information includes the views and opinions of other individuals about the appellant (section 2(1)(g)), information relating to the appellant’s medical, psychiatric or psychological history (section 2(1)(b)) and the appellant’s address and telephone number (section 2(1)(d)).

In addition, I find that the undisclosed responsive portions of the records also contain information that relates to other identifiable individuals in a personal way, including their telephone numbers (section 2(1)(d)) and their name along with other personal information relating to them (section 2(1)(h)). The records describe the personal concerns expressed by these individuals for their personal safety and document the manner in which these concerns were addressed. In my view, because of the personal nature of these concerns, information relating to these individuals qualifies as their personal information.

As a result, I find that all of the remaining information at issue in the records qualifies as the personal information of both the appellant and other identifiable individuals.

### **DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION**

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.

Under section 49(a) of the *Act*, the Ministry has the discretion to deny access to an individual’s own personal information in instances where the exemptions in sections 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

The Ministry has claimed the application of section 49(a), taken in conjunction with the exemption in section 14(1)(c) to all of the remaining information contained in the records. It has also applied section 14(1)(e) to portions of Records 20 to 43 and 46 to 56, section 19 to portions of Record 17 and section 13(1) to portions of Records 20 to 43.

## **LAW ENFORCEMENT**

The Ministry submits that all of the remaining information at issue is exempt under section 49(a), taken in conjunction with section 14(1)(c), which reads:

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

reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 14(1)(e), where section 14 uses the words “could reasonably be expected to”, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Goodis* (May 21, 2003), Toronto Doc. 570/02 (Ont. Div. Ct.), *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

In order to meet the “investigative technique or procedure” test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public [Orders P-170, P-1487].

The techniques or procedures must be “investigative”. The exemption will not apply to “enforcement” techniques or procedures [Orders PO-2034, P-1340].

### **Submissions of the parties**

The majority of the Ministry’s representations on this issue were made confidentially and, as a result, I am unable to reproduce them in the body of this order. The Ministry’s representations set out that the exemption in section 14(1)(c) applies because the records describe in detail the steps taken by it to ensure the safety and security of certain individuals and outline the “techniques and procedures” implemented to accomplish this.

The appellant asked that I review his representations submitted to this office in another appeal as they relate to this exemption. I have carefully examined those submissions and find that they do

not assist me in understanding the appellant's position with respect to the application of section 14(1)(c) to the remaining records at issue.

### **Findings**

The Ministry's representations describe in detail the circumstances surrounding the preparation of the records and the appellant's involvement with the OPP. At that time, the Ministry had very serious concerns about the safety of certain individuals and felt it was required to take certain security measures to ensure their safety. In its confidential submissions, the Ministry sets out the nature and extent of those precautions.

In my view, the disclosure to the appellant of the procedures implemented by the Ministry could reasonably be expected to hinder or compromise the effective utilization of these techniques in the future. I find that the Ministry has provided me with sufficiently detailed and convincing evidence to substantiate such a finding in this case.

Because of the confidential nature of the Ministry's representations, I am unable to describe them in greater detail in this decision. Based on those submissions and my review of the undisclosed portions of the records, however, I am satisfied that the Ministry has established that the disclosure of the records could reasonably be expected to reveal investigative techniques and procedures currently in use in law enforcement under section 14(1)(c). As a result, I find that the undisclosed portions of Records 13 to 43 and 46 to 56 qualify for exemption under section 14(1)(c). Because the information meets the requirements of section 14(1)(c), I find that it is exempt from disclosure under section 49(a).

I further find that the Ministry did not err in the manner in which it exercised its discretion not to disclose the withheld information from the appellant.

Because of the manner in which I have addressed the application of sections 14(1)(c) and 49(a) to the records, it is not necessary for me to consider whether they also qualify for exemption under section 49(a), in conjunction with sections 13(1), 14(1)(e) and 19, or sections 49(b), (d) or (e).

### **ORDER:**

I uphold the Ministry's decision to deny access to the remaining information contained in the records.

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

May 11, 2004

Donald Hale

Adjudicator