



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2319

Appeal PA-030385-1

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 access to records relating to an investigation by the Ontario Provincial Police (the OPP) into a motor vehicle accident that occurred on August 16, 2002 near Kenora, Ontario. The request was made on behalf of a woman residing in Poland whose daughter was one of four individuals killed in the accident.

The Ministry agreed to disclose a seven-page occurrence report but refused access to the remaining records on the basis that they are exempt from disclosure under the discretionary exemption in section 14(1)(l) (facilitate commission of an unlawful act) and the mandatory exemption in section 21(1) (invasion of privacy). The Ministry relies on the consideration listed in section 21(2)(f) (highly sensitive information) and the presumptions in sections 21(3)(a) (information relating to medical history) and 21(3)(b) (information compiled as part of an investigation into a possible violation of law).

The requester, now the appellant, appealed the Ministry's decision to deny access to the records. Mediation was not successful and the matter was moved to the adjudication stage of the appeals process. I sought and received the representations of the Ministry, initially and provided a complete copy of them to the appellant, along with a Notice of Inquiry. The appellant advised that he would not be making submissions in response to the Notice.

RECORDS:

The records consist of three witness statements, a toxicology report relating to one of the deceased persons, a one-page Evidence List Report, a one-page information sheet entitled Toxicology Information, police officers' notes and a summary of a truck driver's log book.

DISCUSSION:

PERSONAL INFORMATION

General principles

The section 21(1) 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].

Findings

The Ministry submits that the records contain information that falls within the ambit of the definition of "personal information" in section 2(1) and that none of this information relates to the appellant.

I have reviewed the records and find that all of them contain only the personal information of individuals other than the appellant. Specifically, the records include information relating to their age and sex (section 2(1)(a)), medical history (section 2(1)(b)), identifying numbers (section 2(1)(c)), addresses and telephone numbers (section 2(1)(d)) and their names along with other personal information (section 2(1)(h)).

INVASION OF PRIVACY

Where a requester seeks personal information of another individual, section 21(1) of the *Act* prohibits an institution from releasing this information unless the disclosure does not constitute an unjustified invasion of personal privacy under section 21(1)(f).

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. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

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].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption [Order PO-1764].

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

The Ministry relies on the “presumed unjustified invasion of personal privacy” in sections 21(3)(a) (information relating to an individual’s medical history) and (b) (information compiled as part of a law enforcement investigation) and the factor listed under section 21(2)(f) (highly sensitive information). These sections state:

- (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,
 - (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,
 - (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

- (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;

The Ministry takes the position that the information contained in the undisclosed records, or portions of records, is highly sensitive within the meaning of section 21(2)(f) and contains information relating to several individuals' medical history, thereby falling within the ambit of the presumption in section 21(3)(a). It also argues that the personal information remaining at issue was compiled as part of an investigation by the Ontario Provincial Police (the OPP) into a possible violation of the *Criminal Code* or the *Highway Traffic Act*, and that this information falls within section 21(3)(b). The Ministry relies on the decision in Order PO-1728 in which Senior Adjudicator David Goodis found that information compiled as part of a police investigation into a motor vehicle accident falls within the scope of the section 21(3)(b) presumption.

The Ministry also submits that "none of the circumstances outlined in section 21(4) of the *FIPPA* would operate to rebut the presumption of an unjustified invasion of personal privacy" and that "there is no compelling public interest in the disclosure of the information at issue" under section 23.

In my view, all of the records remaining at issue in this appeal were compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, I find that their disclosure is presumed to constitute an unjustified invasion of privacy under section 21(3)(b). 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 the remaining records would constitute an unjustified invasion of personal privacy under section 21(1), and they are exempt under that section.

Because I have found that all of the records qualify under the mandatory exemption in section 21(1), it is not necessary for me to address the possible application of section 14(1)(l) to them.

ORDER:

I uphold the Ministry's decision to deny access to the records.

Original signed by: _____

Donald Hale
Adjudicator

September 13, 2004