



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2447

Appeal PA-040334-1

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 copies of all reports, statements and pictures pertaining to a named individual's death on [a specified date].

After contacting eight individuals whose interests may be affected by the outcome of the appeal (the affected persons), the Ministry granted partial access to the responsive records. Access was denied to the remainder pursuant to sections 14(1)(l) and 21(1) in conjunction with the factor at section 21(2)(f) and the presumptions at sections 21(3)(a) and 21(3)(b) of the *Act*. In addition, further information was not disclosed from the records as it was non-responsive to the request.

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

During mediation, the Ministry confirmed that it is not relying on section 20 of the *Act*, although this section is listed on page 31 of the record and in the Index of Records provided by the Ministry. Accordingly, the reference to section 20 on page 31 of the record and the Index of Records should be substituted with section 21(1) of the *Act*.

The appellant requested that the mediator contact the affected persons who had not provided their full consent during the request stage. The appellant asked the mediator to advise the affected persons that he is the brother of the deceased individual. The mediator subsequently contacted the affected persons. None of the affected persons contacted by the mediator provided their written consent to release their personal information and/or statements.

No further mediation was possible and the file was moved to adjudication.

I initially sent a Notice of Inquiry to the Ministry and seven affected persons. I received representations from the Ministry and three affected persons. Two affected persons did not consent to their information being disclosed. One affected person consented to the partial disclosure of her information.

I then sent a Notice of Inquiry to the appellant. I attached the non-confidential portions of the representations provided by the Ministry and one affected person. The appellant provided representations in response.

RECORDS:

The records at issue consist of supplementary and general occurrence reports, witness statements and officers' notes.

DISCUSSION:

LAW ENFORCEMENT

General principles

Sections 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 term “law enforcement” is used in several parts of section 14, and is defined in section 2(1) as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b)

The term “law enforcement” has been found to apply in the following circumstances:

- a municipality’s investigation into a possible violation of a municipal by-law [Orders M-16, MO-1245]
- a police investigation into a possible violation of the *Criminal Code* [Orders M-202, PO-2085]
- a children’s aid society investigation under the *Child and Family Services Act* [Order MO-1416]
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997* [Order MO-1337-I]

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.)].

In the case of section 14(1)(l), where the words “could reasonably be expected to” are used, 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. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Analysis

The Ministry applied section 14(1)(l) to exempt the “ten codes” from disclosure. The “ten codes” are found on the General occurrence report and in the officers’ notes.

The Ministry submits the following regarding the “ten codes”:

...”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 could possibly jeopardize the safety and security of OPP officers.

The Ministry further cites prior orders of this office in support of its position that section 14(1)(l) has been applied to exempt “ten codes” from disclosure (Orders PO-1665, M-757, PO-1877 and MO-1414).

From my review of the information for which the Ministry has claimed section 14(1)(l), I find that the exemption applies to exempt the “ten-code” information in the records at issue from disclosure.

PERSONAL INFORMATION

General principles

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

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

- (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 if they relate to another individual,
- (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].

The meaning of “about” the individual

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 a 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].

The meaning of “identifiable”

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Analysis

The Ministry submits that the record at issue contains personal information of the type described in paragraphs (c), (d), (e), (g) and (h) of the definition of “personal information” in section 2(1) of the *Act*. These paragraphs are set out above. In addition, the Ministry states the following:

The records contain the personal information of a number of identifiable individuals such as the individuals involved in the motor vehicle accident who were the subject of the police investigation into this matter. In addition, the record contains the personal information of those who witnessed the accident and provided statements, as well as sensitive personal information pertaining to the deceased. Specifically, the record contains the names of individuals as described above, addresses of various individuals, the names and/or addresses of possible matches for identification purposes, telephone numbers, dates of birth of various

individuals, driver license numbers/license plate numbers, as well as medical information pertaining to individuals other than the requester. In addition, the records contain the personal information of the deceased...

I agree with the Ministry and find that the record contains personal information, of the type described above, of individuals other than the appellant. In addition, the record contains the views and opinions of the various individuals about the motor vehicle accident and their views and opinions of the other individuals involved in the accident. As such, I find the record contains the personal information of witnesses, individuals involved in the accident and the deceased.

PERSONAL PRIVACY

General principles

Where an appellant seeks the personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. In this case, the exceptions at paragraphs (a) and (f) appear to apply:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(a): consent

For section 21(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request [see Order PO-1723].

As stated above, I received the written consent of one of the affected persons. The affected person consents to the disclosure of the police statement she provided to the Ontario Provincial Police (the OPP) so long as additional information about the circumstances of the motor vehicle accident was provided to the appellant. I provided a copy of the affected person's consent to the appellant during the inquiry.

The affected person notes in her consent that she had sought and received a copy of her police statement.

I am satisfied that this particular affected person's consent to the disclosure of her police statement meets the requirements of section 21(1)(a). Accordingly, this information is not exempt under section 21(1) and it should be disclosed to the appellant.

Section 21(1)(f): disclosure not an unjustified invasion of personal privacy

In applying 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. In this case, the Ministry has raised the application of the following provisions, which it argues are relevant in this appeal:

(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;

Section 21(2) lists criteria for the institution 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 the disclosure of which 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.

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21(1). Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2) [*John Doe*, cited above]. If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

Section 21(3): Presumptions

Representations

The Ministry submits that the presumptions at sections 21(3)(a) and (b) apply to the records. Regarding section 21(3)(a), the Ministry states that the records contain medical diagnosis and/or conditions of individuals other than the appellant who were injured in the motor vehicle accident. Based on my review of the records, I agree. Specifically, the General Occurrence Report, and pages 21, 35, 36 and 37 of the officers' notes contain personal information relating to the medical condition and treatment of these individuals. I find that the disclosure of this information is presumed to constitute an unjustified invasion of their personal privacy.

With respect to the application of section 21(3)(b), the Ministry submits that all of the personal information in the records at issue relate to a traffic-related investigation undertaken by the OPP. The Ministry notes that one of the responsibilities of the OPP is "maintaining a traffic patrol on the King's Highway..." The Ministry further states:

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.

I agree with the Ministry's submissions. In this case, a fatal motor vehicle accident occurred involving a number of drivers and the appellant's brother was struck and killed. I find that the personal information in the records was compiled and is identifiable as part of the OPP's investigation into the accident and the death of the appellant's brother. I find that disclosure of this personal information is presumed to constitute an unjustified invasion of personal privacy and section 21(3)(b) applies to it.

In summary, I find that the presumptions at sections 21(3)(a) and 21(3)(b) apply to the information remaining at issue. Further, I find that section 21(4) does not apply in this appeal and the public interest override in section 23 was not raised. Accordingly, I find that the exception at section 21(1)(f) is not established and the information is exempt under section 21(1) of the *Act*.

In Order MO-2001, Assistant Commissioner Brian Beamish recently dealt with an appeal for similar records. In his conclusion, the Assistant Commissioner stated the following regarding the application of section 14(1) (the municipal equivalent to section 21(1)) which is also appropriate in this appeal:

I have sympathy for the appellant's desire to obtain more information about the circumstances that led to her husband's death. However, where a mandatory exemption such as section 14(1) applies in the context of an access-to-information appeal under the *Act*, the IPC must uphold the application of the exemption, and the institution must not disclose the exempt records. I do not have the discretion

to depart from the rules in the *Act*, even though the result may be unsatisfactory for the appellant.

ORDER:

1. I order the Ministry to disclose page 000009 of the record, the witness statement of the affected person, to the appellant by **March 15, 2006** but not earlier than **March 10, 2006**.
2. I uphold the Ministry's decision to withhold the balance of the information in the records.
3. In order to ensure compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the material sent to the appellant.

Original signed by: _____
Stephanie Haly
Adjudicator

_____ February 8, 2005