



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2438**

**Appeal PA-050164-1**

**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 the requester's deceased brother's police record and any other records related to the deceased person's involvement with the police during his life.

The Ministry located a number of responsive records and issued a decision letter granting access to the majority of the information contained in them. Access was denied to the remainder of the records pursuant to the discretionary exemptions in section 49(a) (discretion to refuse requester's own information), taken in conjunction with section 14(1)(l) (facilitate commission of an unlawful act) and section 49(b) (invasion of privacy), relying on the consideration in section 21(2)(f) and the presumption in section 21(3)(b) of the *Act*.

The requester (now the appellant) appealed the Ministry's decision.

During the mediation stage of the appeal, the appellant accepted that certain computer-generated information at the bottom of each page of the records was not responsive to the request and this information was removed from the scope of the appeal. Further mediation was not possible and the appeal was moved to the adjudication stage of the process. Initially, I sought and received the representations of the Ministry, a complete copy of which was shared with the appellant, along with a Notice of Inquiry. Prior to the receipt of the appellant's representations, the Ministry disclosed certain additional information contained in Records 20, 21, 26, 29 and 30 to her. This information is not, therefore, still at issue in the appeal. The appellant also provided me with representations in response to the Notice.

## **RECORDS:**

The records at issue consist of the undisclosed portions of the Coroner's Investigation Statement, Crown Brief Cover, Victim List, General Occurrence Report, Supplementary Occurrence Reports, Homicide/ Sudden Death Report, Witness Statements and Property List and are described as Records 1, 2, 16-18, 22, 23, 24, 27, 28, 31, 32 and 33.

## **DISCUSSION:**

### **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) 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 if 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].

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]. 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.)].

### **Findings with respect to "personal information"**

I have reviewed the contents of Records 1, 2, 16-18, 22, 23, 24, 27, 28, 31, 32 and 33 and find

that:

- Records 1, 2, 17, 18, 22, 23 and 26 contain the personal information of the appellant, including her name and other personal information about her (section 2(1)(h)), her age and family status (section 2(1)(a)) and address and telephone number (section 2(1)(d));
- Records 24, 27, 28 and 31 include the personal information of other identifiable individuals including their name and other personal information about them (section 2(1)(h)), their age and family status (section 2(1)(a)) and address (section 2(1)(d)); and
- Records 1, 2, 16-18, 22, 23, 24, 27, 28, 31, 32 and 33 all contain the personal information of the appellant's deceased brother, including his name and other personal information (section 2(1)(h)), age, sex and marital status (section 2(1)(a)), information relating to his medical, psychiatric, criminal and employment history (section 2(1)(b)), his address and telephone number (section 2(1)(d)) and the personal views or opinions of other individuals about him (section 2(1)(g)).

## **INVASION OF PRIVACY**

### **General principles**

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 this right.

Under section 49(b), where a record contains the personal information of both the requester and another individual, as is the case with Records 1, 2, 17, 18, 22, 23 and 26, and disclosure of the information would constitute an "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. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Under section 21, where a record contains only the personal information of an individual other than the requester, as is the case with Records 16, 24, 27, 28, 31, 32 and 33, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of personal privacy".

In both these situations, sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. If the information fits within any of paragraphs (a) to (e) of section 21(1) or paragraphs (a) to (c) of section 21(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 49(b) or 21.

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 sections 49(b) and 21. 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 under section 49(b) or 21 [Order P-239].

### **The parties’ representations**

The Ministry submits that the presumption at section 21(3)(b) applies to the personal information contained in the records. This 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;

Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

The Ministry also relies on the consideration listed in section 21(2)(f) which provides that:

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,

the personal information is highly sensitive;

The Ministry argues that:

. . . the exempt personal information consists of highly sensitive personal information that was compiled and is identifiable as part [of] the investigation undertaken by the Office of the Chief Coroner and the OPP into the circumstances of the appellant’s brother’s death.

The records remaining at issue contain personal information that relates to an investigation into a possible violation of law. In the course of their investigation, the OPP interviewed a number of identifiable individuals. The Ministry submits that the exempt personal information was compiled and is identifiable as part of an investigation into a possible violation of law. The Ministry submits that release of this information is presumed to constitute an unjustified invasion of the personal privacy of other individuals. The Ministry submits that the content of the records remaining at issue is supportive of its position in this regard.

The appellant's representations focus on certain questions she has regarding the undisclosed portions of the records and their possible contents. The appellant indicates that what she is seeking is simply a chronology of the contact that had taken place between the Ontario Provincial Police (the OPP) and her deceased brother in order to assist her in understanding and coming to terms with his death.

### **Findings**

While the records at issue do not contain the kind of chronological, historical information sought by the appellant, they do make reference to the most recent OPP contact with the appellant's brother, which is included in the Coroner's Investigation Statement (Records 1 and 2) which was disclosed, with some minor severing, to her.

I have reviewed the undisclosed portions of the records and agree with the position taken by the Ministry that the records were compiled and form part of the OPP and Coroner's investigation into the circumstances surrounding the death of the appellant's brother. In my view, these investigations were undertaken to determine whether or not a violation of law had taken place in the circumstances of the death of the appellant's brother. As such, I find that the presumption in section 21(3)(b) applies to the information.

I find that the disclosure of the undisclosed personal information contained in the records is presumed to constitute an unjustified invasion of personal privacy under section 21(3)(b). As a result, I find that the undisclosed portions of Records 16, 24, 27, 28, 31, 32 and 33 are exempt from disclosure under the mandatory exemption in section 21(1) while the undisclosed portions of Records 1, 2, 17, 18, 22, 23 and 26 qualify for exemption under the discretionary exemption in section 49(b).

The Ministry has provided me with representations concerning the manner in which it exercised its discretion not to release the information contained in Records 1, 2, 17, 18, 22, 23 and 26. I have reviewed these submissions and conclude that the Ministry exercised its discretion under section 49(b) properly and I will not disturb it on appeal.

I have a great deal of sympathy for the arguments put forward by the appellant in the circumstances. The death of a loved one often leaves unanswered questions. In my view, the Ministry has applied the privacy protection provisions of the *Act* in an appropriate manner and

ensured that the appellant was given the maximum amount of disclosure without infringing on the privacy of other identifiable individuals.

**ORDER:**

I uphold the Ministry's decision.

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Donald Hale  
Adjudicator

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December 22, 2005