



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2448

Appeal PA-050203-1

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 the notes of the investigating Ontario Provincial Police (OPP) officer and the witness statements for a particular motor vehicle accident. The requester had been a passenger in one of the automobiles involved in the accident.

The Ministry responded to the request by identifying that, as the disclosure of the records that are responsive to the request may affect the interests of affected parties, these individuals were being contacted in accordance with section 28 of the *Act*. Following notification to the affected parties, the Ministry issued a decision letter to the requester in which it indicated that partial access was being granted to the records responsive to the request. Access to the remaining records or portions of records was denied on the basis of the exemptions in section 14(1)(l) (facilitate commission of an unlawful act), and sections 21(1) and 49(b) (invasion of privacy), with reference to the presumption in section 21(3)(b) of the *Act*. The Ministry also indicated that portions of the records were severed as they were not responsive to the request.

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

During mediation, one of the affected parties consented to the disclosure of their information to the appellant, and the Ministry subsequently disclosed information relating to that affected party to the appellant. Also during mediation, the appellant's representative confirmed that those portions of the records severed on the basis of section 14(1)(l), as well as those withheld on the basis that they are non-responsive, were no longer at issue in this appeal.

Mediation did not resolve the remaining issues, and this appeal was transferred to the inquiry 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, along with a complete copy of the Ministry's representations, to the appellant. I did not receive representations from the appellant.

RECORDS:

The records remaining at issue in this appeal consist of three witness statements (pages 1 through 5 of the Records), and the undisclosed portion of a police officer's notes (portions of pages 9 and 10 of the Records).

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)) 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) and (h) of the definition of “personal information”. It argues that the information relates to certain identifiable individuals who witnessed the accident, and that it includes their names, addresses, telephone numbers and driver’s licence numbers, as well as the statements they made with respect to the accident. The Ministry also states that this information qualifies as recorded information about identifiable individuals other than the appellant.

I have reviewed the records remaining at issue, which contain the names, addresses, telephone numbers, driver’s licence numbers and statements of witnesses to the accident. I am satisfied that these records contain the personal information of the identifiable individuals who made those statements. I am also satisfied that the records remaining at issue do not contain the personal information of the appellant for the purpose of section 2(1) of the *Act*.

INVASION OF PRIVACY

Section 21(1) requires an institution to deny access to personal information of someone other than a requester unless one of the exceptions listed in this section are present. One such exception is section 21(1)(f), which states:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

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; and 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] though it 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. [See Order PO-1764]

Section 21(3)(b)

The Ministry submits that the presumption in section 21(3)(b) applies to the records. That section reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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;

In support of its position that records fit within the section 21(3)(b) presumption, the Ministry identifies the responsibilities of the OPP under the *Police Service Act* and then states:

The information at issue in this appeal relates to an investigation into a traffic accident undertaken by the OPP. 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 the personal information contained in the record was compiled and is identifiable as part of an OPP investigation into a possible violation of the law, in accordance with section 21(3)(b) of the *Act*. The Ministry further submits that none of the circumstances as outlined in section 21(4) of the *Act* would operate to rebut the presumption of an unjustified invasion of personal privacy ...

As identified above, the Ministry's representations were shared with the appellant, and the appellant has chosen not to provide representations in this appeal.

Finding

On my review of the records remaining at issue in this appeal, I am satisfied that they were compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the disclosure of these records is presumed to constitute an unjustified invasion of privacy under section 21(3)(b) of the *Act*. As set out above, a section 21(3) presumption cannot be rebutted by the factors in section 21(2), and in my view section 21(4) has no application in this case. I therefore find that disclosing the information would constitute an unjustified invasion of personal privacy under section 21(1) and it is exempt under that section.

ORDER:

I uphold the Ministry's decision

Original signed by: _____
Frank DeVries
Adjudicator

February 13, 2006 _____