



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2442

Appeal PA-050168-1

Ministry of Community Safety and Correctional Services



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

. . . all information you may possess regarding [a specified occurrence], including the specifics of any and all statements made regarding my person; plus any disposition the O.P.P. arrived at regarding said “occurrences”.

The Ministry located a number of responsive records and granted partial access to them. Access to the remaining records, and parts of records, was denied pursuant to the following exemptions found in the *Act*:

- section 49(a) (discretion to refuse requester’s own information), in conjunction with sections 14(1)(e)(endanger life or safety), 14(1)(l) (facilitate commission of an unlawful act) and 14(2)(a) (law enforcement report); and
- section 49(b) of the *Act*, relying on the consideration in section 21(2)(f) and the presumption in section 21(3)(b).

The Ministry also informed the requester that the records appear to contain information that is not responsive to his request. The requester (now the appellant) appealed the Ministry’s decision.

During mediation, the appellant advised that he was no longer seeking access to the information to which the Ministry had applied section 49(a)/14(1)(l); nor was he seeking access to those portions of the records identified as not responsive to his request.

As further mediation was not possible, the appeal was moved to the adjudication stage of the process. I sought and received the representations of the Ministry, initially, and shared a complete copy of them with the appellant. I did not receive a response to the Notice of Inquiry provided to the appellant.

RECORDS:

The records at issue consist of the undisclosed portions of an Occurrence Summary, a General Occurrence Report, Supplementary Occurrence Reports, officers’ notebook entries and handwritten notes that are responsive and do not contain information that was subject to the section 14(1)(l) exemption.

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain “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;

I have reviewed the contents of the records at issue and find that they contain personal information within the meaning of section 2(1). Specifically, I find that each of the records

contains information which qualifies as the “personal information” of the appellant and two other identifiable individuals.

Specifically, the personal information consists of the names of the appellant and two other identifiable individuals and other personal information about them (section 2(1)(h)), the views or opinions of an individual about the appellant (section 2(1)(g)), the address and telephone number of the appellant and the other identifiable individuals (section 2(1)(d)) and information relating to the marital and family status of the appellant and the other identifiable individuals (section 2(1)(a)).

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 personal information of both the requester and another individual, 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. Sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met.

If the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). If any of paragraphs (a) to (c) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). 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 49(b). 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].

The representations of the Ministry

The Ministry submit that the presumption in section 21(3)(b) applies. 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;

It goes on to state that:

. . . the personal information remaining at issue consists of highly sensitive personal information that was compiled and is identifiable as part of an OPP [Ontario Provincial Police] investigation into a possible violation of law. The Ministry submits that the content of the records at issue is supportive of its position in this regard.

The Ministry also provides an explanation as to the circumstances surrounding the creation of the records and the fact that they were compiled as part of its investigation by the OPP into allegations of criminal wrong-doing made against the appellant. It points out that the fact that charges were ultimately not laid in this case does not negate the application of the presumption in section 21(3)(b).

As noted above, the appellant did not respond to the Notice of Inquiry provided to him.

Findings

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's investigation into certain allegations made against the appellant. In my view, this investigation was undertaken to determine whether or not a violation of law had taken place in the circumstances. As such, I find that the presumption in section 21(3)(b) applies to the personal information contained in the records.

Accordingly, I conclude 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 the records at issue are exempt 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 the records. 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.

Because of the manner in which I have addressed the application of the discretionary exemption in section 49(b) to the records, it is not necessary for me to consider whether they are also exempt under sections 49(a), taken in conjunction with sections 14(1)(e) and 14(2)(a).

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Donald Hale
Adjudicator

January 3, 2006