



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2543**

**Appeal PA-060120-1**

**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 [Ontario Provincial Police (the OPP)] report for an incident in which I was involved and the police were called. The incident resulted when I attempted to pick up my horse at a boarding facility. The barn owners (the affected persons) prevented me from taking the horse. Police were called, and the horse was eventually removed under police escort...

The Ministry granted partial access to two responsive records. Access to the undisclosed portions of the responsive records was denied on the basis that it was exempt from disclosure under section 49(a) (discretion to refuse requester's information), read in conjunction with the law enforcement exemptions in sections 14(1)(l) and 14(2)(a). Access was also denied under section 49(b) (personal privacy). As well, the Ministry advised that some of the information contained in the records was not responsive to the request.

The requester (now the appellant) appealed this decision.

During mediation the appellant advised that she is not interested in obtaining access to any information that is not responsive to her request, or to information withheld under section 14(1)(l) of the *Act*. Accordingly, the portions of the record marked non-responsive and the application of section 14(1)(l) are no longer in issue.

As further mediation was not possible, the file was moved to the adjudication stage of the appeal process. I sent a Notice of Inquiry to the Ministry, initially, outlining the background and issues in the appeal, and inviting representations. I also sent the Notice of Inquiry to two other individuals who may have an interest in the disclosure of the records (the affected persons). I received representations only from the Ministry, a complete copy of which was sent to the appellant with the Notice of Inquiry. In its representations, the Ministry withdrew its reliance upon section 49(a) in conjunction with section 14(2)(a). Therefore, section 14(2)(a) is no longer in issue. In conjunction with its representations, the Ministry issued a supplemental decision letter to the appellant which provided her with access to additional information from the responsive records. The appellant also provided representations in response to the Notice of Inquiry.

## **RECORDS:**

The information at issue in this appeal is contained in the severed portions of two one-page documents. The Ministry has severed from the General Occurrence Report [Record 1] the OPP officer's discussion with the affected persons. The Ministry has severed from the Occurrence Summary [Record 2] the affected persons' names, addresses, phone numbers, dates of birth and ages, along with the appellant's address. The Ministry claims that the withheld portions are exempt under section 49(b). As outlined above, sections 14(1)(l) and 14(2)(a) are no longer in issue. As well, because these were the only exemptions claimed in conjunction with section 49(a), the latter is also no longer at issue.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

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). 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 Ministry submits that the records contain personal information in accordance with the following paragraphs of section 2(1):

“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,

(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;

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].

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.)].

The Ministry submits that the records contain the personal information of the appellants and other identifiable individuals (the affected persons).

The appellant disputes the Ministry's submission that the records contain personal information. The appellant states that:

Further, the business is registered to the sole proprietorship of [affected person 1]. The receipt for the amount of money which was taken as notice and required in order to move my horse (copy attached) was signed by [affected person 2]. As the complainant, my attendance at this event had to do with a business contract. Similarly, both individuals were present during the incident and both were acting in their professional capacity under terms of a business contract, one as proprietor, the other as a representative with authority to sign financial documents. As such, the names of the persons involved do not represent the personal information of individuals acting in a private capacity, but are in fact the names of the representatives of a duly registered business who were acting in a manner that required attendance by police in order to keep the peace.

### **Analysis/Findings**

Both of the records concern a complaint filed by the appellant with the OPP against a named business (a sole proprietorship), which is owned by one of the affected persons, according to the business registration documents provided by the appellant. The appellant had requested that the OPP assist her in removing her horse from the boarding facility. The affected persons were not allowing the appellant to remove her horse without paying the last month's service charge. The records reflect the investigating OPP officer's documentation of the appellant's complaint and its resolution.

In determining whether the information in the records concerning the affected persons qualifies as recorded information about them in their business or personal capacity, I have looked at the roles of the appellant and the affected persons, as reflected in the records and the documents provided to me by the appellant with her representations. I have also looked at the circumstances which gave rise to the creation of the records. The business registration report provided to me by the appellant is a publicly registered document and reveals affected person 1's name as the registered owner of the business along with the business' registered address. The affected persons were mentioned in the OPP notes in connection with their roles in this sole proprietorship business in which the second affected person was employed. The records were

created as a result of a contractual dispute between the appellant and the affected persons. I find that the records reflect an incident in which the affected persons were acting in their business capacity and that, with several exceptions discussed below, the information in the records concerning the affected persons was provided to the OPP officers by the affected persons in, and in relation to, their business capacity.

My finding that the recorded information in the records is about the affected persons in their business capacity is supported by the records and the documents provided by the appellant with her representations. In particular, the summary paragraph of Record 2, the Occurrence Summary, states that the incident which gave rise to the records is a “civil matter only... dispute over horse boarding”. Subsequent to the incident in the records, the appellant initiated civil court proceedings against the affected persons over the subject matter of the records, namely, the boarding of her horse at the business premises owned by affected person 1.

Although the undisclosed information in the records relates to the affected persons in their business capacity, some of this information may still qualify as personal information if the information reveals something of a personal nature about these individuals [Orders P-1409, R-980015, PO-2225]. The personal information of the affected persons in the records is their dates of birth and ages and affected person 2’s home address. The appellant’s home address in Record 2 is also her personal information.

The Ministry only claims section 49(b) for the records. The appellant’s address is the personal information of the appellant only and its disclosure cannot constitute an unjustified invasion of the affected persons’ personal privacy. This information cannot be exempt by reason of section 49(b). I will therefore order the appellant’s address in Record 2 to be released.

The remainder of the undisclosed information in the records, except for the affected persons’ dates of birth and ages and affected person 2’s home address, concern a business dispute and is not personal information. For this reason, disclosure of the remaining information cannot constitute an unjustified invasion of the affected persons’ personal privacy. This information cannot be exempt by reason of section 49(b). I therefore will order the undisclosed information in the records concerning the affected persons to be released, except for the affected persons’ dates of birth and ages and affected person 2’s home address.

I will now consider whether the affected persons’ dates of birth and ages and affected person 2’s home address are exempt under section 49(b).

## **PERSONAL PRIVACY**

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.

Sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met.

The Ministry has claimed that disclosure constitutes an unjustified invasion of personal privacy by reason of the application of section 21(3)(b).

Section 21(3) provides that:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(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 states:

The exempt information was compiled and is identifiable as relating to the law enforcement investigation undertaken by the OPP in regard to a dispute that occurred involving the appellant and other individuals. The dispute concerned issues relating to the possession of the appellant's horse. Law enforcement investigations into ownership of property issues could potentially lead to charges of Theft, an offence under section 322 of the *Criminal Code*. In this instance, no charges were ultimately laid by the OPP. The Ministry submits that the application of section 21(3)(b) of the *FIPPA* is not dependent upon whether charges are actually laid (Orders P-223, P-237 and P-1225).

The appellant does not directly address the issue of whether the information at issue falls within the ambit of the presumption in section 21(3)(b).

### **Analysis/Findings**

The personal information remaining that I have found to contain personal information is all contained in the Occurrence Summary (Record 2). This information is the affected persons' dates of birth and ages and affected person 2's home address. I find that the presumption in section 21(3)(b) applies to these undisclosed portions of Record 2. As stated by the Ministry, the information was compiled and is identifiable as part of an investigation into a possible violation of law under the *Criminal Code* [Order P-242]. The fact that criminal or quasi-criminal proceedings were not commenced does not have a bearing on the issue, since section 21(3)(b) only requires that there be an investigation into a possible violation of law (Orders PO-1849 and PO-2167).

As a result of my finding that the presumption in section 21(3)(b) applies to the personal information at issue, I conclude that its disclosure is presumed to constitute an unjustified

invasion of the personal privacy of the affected persons under section 49(b). Having found that section 21(3)(b) applies I am precluded from considering any of the factors weighing in favour of disclosure under section 21(2), because of *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

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. Section 21(4) has no application to the information at issue and section 23 was not raised by the appellant. Therefore, subject to my discussion of Exercise of Discretion, I conclude that disclosure of the affected persons’ personal information in the records would constitute an unjustified invasion of the personal privacy of the affected persons and that this information qualifies for exemption under section 49(b).

### **EXERCISE OF DISCRETION**

The section 49 exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

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.

### **Representations of the Parties**

The Ministry states that it:

...carefully weighed the appellant’s right of access to records that contain her personal information against the other identified individuals’ rights to privacy protection. The Ministry took into consideration that the appellant is an individual rather than an organization. The Ministry considered providing the appellant with total access to the information at issue notwithstanding that a discretionary exemption from disclosure applies.

The Ministry considered the fact that the appellant may believe she has a sympathetic or compelling need to obtain access to additional information concerning the OPP investigation that resulted in the creation of the responsive records. The Ministry is also aware of the business relationship between the appellant and the other individuals identified in the information remaining at issue. It should be noted that the Ministry has issued two separate decision letters to the appellant providing her with access to as much information as possible.

The Ministry also took into consideration in its exercise of discretion that the records relate to a matter that was investigated in the relatively recent past...

The historic practice of the Ministry is to provide individuals with access to as much information as possible from police records. The Ministry considered whether release of the information remaining at issue could generally discourage parties from sharing information with the police regarding potential violations of law and undermine the ability of the OPP to provide policing services. The Ministry does not believe that release of the information remaining at issue would increase public confidence in the provision of policing services by the OPP.

In view of the particular circumstances of the appellant's request, the Ministry in its exercise of discretion concluded that the level of disclosure provided to the appellant was appropriate in the circumstances. The Ministry submits that release of the withheld information is not appropriate.

The appellant does not directly address the issue of the Ministry's exercise of discretion in her representations.

### **Analysis/Findings**

I have considered the representations of the Ministry along with those of the appellant. I find that the Ministry exercised its discretion under section 49(b) in a proper manner, taking into account relevant factors and not taking into account irrelevant factors in denying access to the remainder of the records, namely, the affected persons' dates of birth and ages and affected person 2's home address all contained in Record 2. Disclosure of these portions of Record 2 would result in an unjustified invasion of the affected persons' privacy.

### **ORDER:**

1. I order the Ministry to disclose to the appellant the undisclosed information in the records, except for the affected persons' dates of birth and ages and affected person 2's home address in Record 2 and the information in both records withheld under section 14(1)(l) of the *Act*, by sending her a copy of this information **by February 28, 2007 but not earlier than February 22, 2007**. For greater certainty, the information **not** to be disclosed is the information that is highlighted in colour on a copy of the records provided to the Ministry with this order.
2. In order to verify compliance with this order I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1, upon my request.

Original Signed By: \_\_\_\_\_

January 24, 2007

Diane Smith  
Adjudicator