



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2608

Appeal PA06-283

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 general records relating to a backhoe accident that killed a young man. Specifically, the request stated that:

My concern is to obtain the police incident report to learn what model of backhoe was involved in the accident, what type of boom controls were installed on the backhoe, and the general circumstances of the accident. Feel free to redact, cover, or black out any personal information concerning the victim.

The requester also provided the Ministry with the name of the victim, the type of accident, the date and location of the accident, and the Ontario Provincial Police (OPP) incident report number. He had obtained this basic information from the OPP detachment in Lanark County and a newspaper article that appeared in *The Kingston Whig-Standard* concerning the accident.

The Ministry located nine pages of records responsive to the request. It issued a decision letter to the requester informing him that “access to [the OPP report] is denied as the records concern a matter that is currently under investigation by the Office of the Chief Coroner.”

The decision letter further stated that the Ministry was denying him access to the records pursuant to the law enforcement exemptions in sections 14(1)(a), 14(1)(l) and 14(2)(a) of the *Act*; and the personal privacy exemption in section 21(1) of the *Act*, in conjunction with the factor in section 21(2)(f) and the presumptions in sections 21(3)(a) and 21(3)(b). In addition, it stated that some information in the responsive records, such as the computer generated text associated with the printing of the records, is not responsive to the request.

The requester (now the appellant) appealed the Ministry’s decision to this office. In his appeal letter, the appellant provided comments on each section of the *Act* claimed by the Ministry. In addition, he attached a letter that he received from the Canadian Centre for Occupational Health and Safety that stated, “This was a farming accident and no inquest was held according to the Chief Coroner’s Office of Ontario.”

In addition, the appellant stated in his appeal letter that, “The public’s interest in preventing product liability accidents in this instance vastly outweighs the government’s unreasonable desire to refrain from disclosing this [routine] police accident investigation report.” Consequently, the possible application of the public interest override provision in section 23 of the *Act* is at issue in this appeal.

During the mediation stage of the appeal process, the appellant stated that he is not seeking personal information in the records and the computer generated text associated with the printing of the records. He reiterated that he is pursuing access to all of the remaining information relating to the accident, and more specifically, to any information relating to the make and model of the backhoe.

In response, the Ministry reiterated that it will not disclose any information from the records at issue because the death of the young man is still being investigated by the Office of the Chief Coroner (OCC).

This appeal was not settled in mediation and was transferred to adjudication. Initially, I issued a Notice of Inquiry to the Ministry. In response, the Ministry submitted representations to this office. In its representations, the Ministry states that the OCC investigation is complete. Consequently, the Ministry is no longer relying on the discretionary exemptions in sections 14(1)(a) and 14(2)(a) of the *Act*.

I then issued a Notice of Inquiry to the appellant, along with a complete copy of the Ministry's representations. In response, the appellant also submitted representations to this office.

RECORDS:

The records at issue are as follows:

Description of record	Page number(s)
Occurrence summary	1
Homicide/Sudden death report	2-6
Supplementary occurrence report	7-8
Supplementary occurrence report	9

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 where 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 if 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].

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].

In its representations, the Ministry states that the records at issue contain information relating to a number of individuals, including the deceased individual and his family. It submits that this information is "personal information," as that term is defined in paragraphs (a), (b), (c), (d), (e), (g) and (h) of section 2(1) of the *Act*.

The appellant did not provide representations as to whether the records contain personal information, although he indicated in his access request that the Ministry should "[f]eel free to redact, cover, or black out any personal information concerning the victim."

I have carefully reviewed the records at issue, which contain information about a number of individuals, including the deceased individual, his mother, and a witness to the accident.

I find that the records contain the personal information of the deceased individual, because they include his age (birth date), as specified in paragraph (a) of the definition of "personal information" in section 2(1) of the *Act*. In addition, the records include the views or opinions of another individual about the deceased individual, as specified in paragraph (g), and his name

along with other personal information relating to him, as specified in paragraph (h) of the definition.

Section 2(2) provides that “[p]ersonal information does not include information about an individual who has been dead for more than thirty years.” As the deceased individual died less than thirty years ago, section 2(2) does not apply.

I find that the records also include the personal information of the deceased individual’s mother and a witness to the accident, because they include their ages (birth dates), as specified in paragraph (a) of the definition of “personal information” in section 2(1) of the *Act*. They also include their addresses and telephone numbers, as contemplated by paragraph (d) of the definition.

I will now consider whether the personal information in the records at issue qualifies for exemption under section 21(1) of the *Act*.

PERSONAL PRIVACY

General principles

Where a requester seeks 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 the circumstances of this appeal, it appears that the only exception that could apply 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.

The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f).

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)(f). 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].

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 presumptions in section 21(3)

Section 21(3)(a)

The Ministry submits that the presumption in section 21(3)(a) applies to some of the deceased individual's personal information. This provision states:

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

relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

The Ministry asserts that portions of the records contain medical information relating to the deceased individual, and that disclosure of this information is presumed to constitute an unjustified invasion of his personal privacy pursuant to section 21(3)(a).

The appellant's representations do not address whether the section 21(3)(a) presumption applies to any of the personal information at issue in the records. However, in the appeal letter that he submitted to the Commissioner's office, the appellant submits that he is not interested in any medical information relating to the appellant.

I have reviewed the records at issue and agree with the Ministry that some of the deceased's individual's personal information relates to a *medical diagnosis*. Consequently, I find that disclosure of this information is presumed to constitute an unjustified invasion of his personal privacy pursuant to section 21(3)(a).

Section 21(3)(b)

The Ministry submits that the presumption in section 21(3)(b) applies to some of the personal information relating to the deceased individual and other individuals. This provision 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;

The Ministry asserts that large portions of the records contain personal information relating to the deceased individual and other individuals that was compiled and is identifiable as part of a law enforcement investigation undertaken by the OPP and the OCC into the circumstances of the accident victim's death. It submits that disclosure of this information is presumed to constitute an unjustified invasion of these individuals' personal privacy pursuant to section 21(3)(b).

The appellant's representations do not address whether the section 21(3)(b) presumption applies to any of the personal information at issue in the records. However, in the appeal letter that he submitted to the Commissioner's office, the appellant submits that, "The routine police investigation here was clearly only done to confirm the obvious fact that this was a routine farm accident. There has never been the slightest suggestion of foul play."

I have reviewed the records at issue and agree with the Ministry that large portions of the records contain personal information relating to the deceased individual and other individuals (his mother and a witness to the accident) that was compiled and is identifiable as part of an investigation into a possible violation of the law. The OPP investigated the accident to determine whether a violation of the federal *Criminal Code* might have led to the young man's death.

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]. Consequently, I am not persuaded by the appellant's suggestion that the section 21(3)(b) presumption might not apply because there was no evidence of "foul play."

I find, therefore, that disclosure of those portions of the records containing personal information relating to the deceased individual and two other individuals (his mother and a witness to the accident) is presumed to constitute an unjustified invasion of their personal privacy pursuant to section 21(3)(b).

Conclusion

I have found that the presumption in section 21(3)(a) applies to some of the deceased individual's personal information, and that the presumption in section 21(3)(b) applies to all portions of the records containing personal information relating to the deceased individual, his mother and a witness to the accident.

The Divisional Court's decision in the *John Doe* case, cited above, precludes me from considering whether the section 21(3)(b) presumption can be rebutted by either one or a combination of the factors set out in section 21(2). However, a presumed unjustified invasion of personal privacy under section 21(3) can be overcome if section 21(4) or the "public interest override" at section 23 applies.

I have considered the application of the exceptions contained in section 21(4) of the *Act* and find that the personal information at issue does not fall within the ambit of this section. Accordingly, subject to my discussion below with respect to the application of the public interest override in section 23 of the *Act*, I find that the personal information of the deceased individual, his mother and a witness to the accident is exempt from disclosure under section 21(1) of the *Act*.

LAW ENFORCEMENT

In the decision letter that it issued to the appellant, the Ministry initially claimed that the law enforcement exemptions in sections 14(1)(a), 14(1)(l) and 14(2)(a) of the *Act* apply to the records at issue.

However in its representations, the Ministry states that because the OCC investigation is complete, it is no longer relying on the discretionary exemptions in sections 14(1)(a) and 14(2)(a) of the *Act*. Consequently, the only law enforcement exemption that the Ministry continues to claim is section 14(1)(l). This provision 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.

In its representations, the Ministry clarifies that this exemption only applies to the various operational police codes in the records at issue, including “ten” codes, alerts, and location and zone codes.

However, it is clear that the appellant is not seeking this information. In the appeal letter that he submitted to the Commissioner’s office, the appellant emphasized that he is only interested in “how the accident happened and in the backhoe that caused the fatal injury.” Consequently, I find that the information in the records relating to “police codes” is not responsive to the appellant’s request and may be withheld on that basis. In short, it is not necessary to consider whether the section 14(1)(l) exemption applies to this information.

PUBLIC INTEREST OVERRIDE

The appellant states in his appeal letter that, “The public’s interest in preventing product liability accidents in this instance vastly outweighs the government’s unreasonable desire to refrain from disclosing this [routine] police accident investigation report.”

Consequently, the public interest override in section 23 of the *Act* is at issue in this appeal. Section 23 states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

I have found that the personal information of the deceased individual, his mother and a witness to the accident is exempt from disclosure under section 21(1) of the *Act*. It must be determined, therefore, whether there is a compelling public interest in disclosure of this information that outweighs the purpose of the section 21(1) exemption.

For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

The word “compelling” has been defined in previous orders as “rousing strong interest or attention” [Order P-984].

With respect to the first requirement, the Ministry submits that the appellant appears to have a private interest in accessing the records at issue, and that this does not constitute a compelling public interest within the meaning of section 23 of the *Act*.

With respect to the second requirement, the Ministry submits that personal information at issue is highly sensitive, and that the mandatory exemption in section 21(1) of the *Act* would not be outweighed by any compelling public interest.

In his representations, the appellant does not specifically address whether the public interest override in section 23 of the *Act* applies in the circumstances of this appeal, but simply asserts that his access request “does not meaningfully intrude on anyone’s privacy, but may help to improve a product’s safety.”

I have carefully considered the parties’ representations. Although there is certainly a public interest in product safety, the appellant has not provided me with any evidence to show that there is “rousing strong interest or attention” amongst the public in seeking access to information relating to the incident that resulted in the young man’s death.

Consequently, I agree with the Ministry that there is no *compelling* public interest in disclosure of the specific personal information at issue in this appeal. As the first requirement of section 23 has not been met, it is not necessary for me to consider whether the second requirement has been satisfied.

I find, therefore, that the public interest override in section 23 of the *Act* does not apply in the circumstances of this particular appeal.

SEVERANCES

Section 10(2) of the *Act* obliges the institution to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt.

In both his appeal letter and during the mediation stage of the appeal process, the appellant emphasized that he is seeking any information in the records relating to the backhoe involved in the fatal accident, particularly its make and model.

In its representations, the Ministry does not claim that the information in the records relating to the backhoe is exempt from disclosure under the personal privacy exemption in section 21(1) of the *Act* or the law enforcement exemption in section 14(1)(l). However, it has withheld the records at issue in their entirety.

I have reviewed the records and find that some of the information relating to the backhoe (pages 1 and 9) can reasonably be severed without disclosing information which is exempt from disclosure under the personal privacy exemption in section 21(1) of the *Act*. Consequently, I will order the Ministry to disclose this information to the appellant.

ORDER:

1. I uphold the Ministry's decision to deny access to the records at issue, except for certain portions relating to the backhoe involved in the accident. I have highlighted these portions in green on a copy of two pages of the records (pages 1 and 9) that I am sending to the Ministry. To be clear, the Ministry must only disclose those portions of the records that are highlighted in green.
2. I order the Ministry to provide a severed version of pages 1 and 9 of the records to the appellant by **September 28, 2007**.
3. 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.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

_____ August 30, 2007