



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2585**

## **Appeal PA06-371**

### **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 a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records maintained by the Ontario Provincial Police (the OPP). The records sought relate to an incident which occurred on a specified date and involved a domestic dispute between the requester and three other family members.

The Ministry issued a decision providing partial access to the records, severing information on the basis that it qualified for exemption under section 49(a), in conjunction with sections 14(1)(l) and 14(2)(a) (law enforcement report), and section 49(b) in conjunction with section 21(1) (invasion of privacy) of the *Act*. The Ministry also noted that some information had been removed as non-responsive to the request.

The requester, now the appellant, appealed this decision.

During mediation, the appellant removed the non-responsive sections and the severances made under section 14(1)(l) from the scope of the appeal. The mediator obtained the consent of one of the individuals involved in the domestic dispute (affected person #1) to the disclosure of his/her personal information to the appellant. The appellant asked that the two other individuals involved in the domestic dispute not be contacted.

As mediation was not successful in resolving the appeal, the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry to the Ministry setting out the facts and issues in this appeal and seeking its representations. The Ministry provided representations in response and also disclosed additional portions of the records to the appellant. In its representations, the Ministry withdrew its reliance upon section 49(a) in conjunction with section 14(2)(a), to deny access to the records. I then sent a Notice of Inquiry to the appellant, along with a copy of the representations of the Ministry, seeking her representations. I received submissions from the appellant in response.

## **RECORDS:**

The records consist of a two-page General Occurrence Report and a one-page Occurrence Summary.

## **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) 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].

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.)].

## **Representations**

The Ministry submits that the records contain the personal information of the appellant, affected person #1 and two other identifiable individuals (affected persons #2 and #3) involved in the domestic dispute incident, pursuant to paragraphs (a), (d), (e), (g) and (h) of the definition of “personal information” contained in section 2(1) of the *Act*.

The appellant does not directly address the issue of whether the records contain personal information in her representations.

## **Analysis/Findings**

I have reviewed the contents of the records at issue and find that they contain the “personal information” of the appellant and all three affected persons. The personal information about the appellant and the affected persons includes information relating to their age, sex, marital or family status (paragraph (a)), addresses and telephone numbers (paragraph (d)), their personal views (paragraph (e)), the views or opinions of another individual about them (paragraph (g)), and their names where it appears with other personal information relating to them (paragraph (h)).

## **RIGHT OF ACCESS TO ONE’S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF ANOTHER INDIVIDUAL**

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.

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.

## **Representations**

The Ministry has claimed that disclosure of the records constitutes a presumed unjustified invasion of personal privacy by reason of the application of section 21(3)(b). Section 21(3)(b) provides that:

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 submits that:

...the personal information remaining at issue consists of personal information that was compiled and is identifiable as part of an OPP investigation into a possible violation of law. The OPP is an agency that has the function of enforcing the laws of Canada and the Province of Ontario. The *Police Services Act* provides for the composition, authority and jurisdiction of the OPP. Some of the duties of a police officer include investigating possible law violations, crime prevention and apprehending criminals and others who may lawfully be taken into custody.

The exempt information was compiled and is identifiable as relating to the law enforcement investigation undertaken by the OPP in regard to an allegation of assault involving the appellant and another individual. As can be noted from the content of the responsive records, the dispute involving the appellant and other family members was investigated as a possible assault. Assault is an offence under section 266 of the *Criminal Code*.

## **Analysis/Findings**

Upon review of the records, I find that they were compiled and are identifiable as part of an investigation by the OPP into a possible violation of law as contemplated by section 21(3)(b). The already disclosed information from the records reveals that the police were investigating

whether a charge of assault pursuant to the *Criminal Code of Canada* should be laid against one of the affected persons who was involved in an altercation with the appellant.

The presumption in section 21(3)(b) applies to the personal information at issue even though criminal proceedings were not commenced. The presumption in section 21(3)(b) only requires that there be an investigation into a possible violation of law [Order P-242].

This presumed unjustified invasion of personal privacy under section 21(3), cannot be rebutted by one or more factors or circumstances under section 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. 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*, cited above]. Section 23 has not been raised by the appellant and section 21(4) is inapplicable in this appeal.

Therefore, subject to my consideration of the absurd result principle and the Ministry’s exercise of discretion, I conclude that disclosure of the personal information in the records is presumed to constitute an unjustified invasion of the personal privacy of the individuals who have not consented to the disclosure of their personal information to the appellant, namely, affected persons #2 and #3, and qualifies for exemption under section 49(b).

### **Absurd result**

Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 49(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]
- the requester was present when the information was provided to the institution [Orders M-444, P-1414]
- the information is clearly within the requester’s knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester’s knowledge [Orders M-757, MO-1323, MO-1378].

## **Representations**

The Ministry submits that:

...in the particular and highly sensitive circumstances of the appellant's request, release of the withheld information would be inconsistent with the section 49(b) privacy exemption that has been applied to the records at issue. As noted previously, the appellant did not want the other two affected parties involved formally notified and given the usual opportunity to comment on the disclosure of records containing their personal information. This is a factor weighing against the application of the absurd result principle in this instance.

The appellant submits that she is already aware of most, if not all, of the personal information in the records as she was present when the altercation that is described in the records took place. In addition, she points out that since she is a relative of the affected persons who are identified in the records, she is aware of much of the personal information that may have been recorded in the records about these persons.

## **Analysis/Findings**

Upon review of the records and the representations of the appellant, I find that she is otherwise aware of some of the undisclosed personal information in the records relating to the altercation and the alleged assault that took place at the home of the affected persons. Because the appellant was present when the altercation occurred and at the time the information was provided to the OPP and she is an immediate family member of the affected persons, some of the undisclosed personal information in the records is clearly within her knowledge.

As a result, I will order that the appellant be given access to the responsive portions of the records that are clearly within her knowledge. I will now consider whether the Ministry properly exercised its discretion in this appeal with respect to the remaining personal information in the records.

## **Exercise of Discretion**

The section 49(b) 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.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations

- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information



The Ministry submits 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 account that the appellant is an individual rather than an organization. The Ministry considered providing the appellant with total access to the information at issue. The Ministry ultimately decided to provide the appellant with partial access to the requested information.

The historic practice of the Ministry when responding to personal information requests from individuals for access to police records is to release as much information as possible in the circumstances. In this regard, it should be noted that the Ministry has issued two decision letters to the appellant providing her with access to a substantial portion of the requested information.

Given the relatively recent and highly sensitive nature of the family dispute in question, the Ministry was satisfied that release of additional information from the records at issue would cause personal distress to other identifiable individuals. At the direction of the appellant, these other individuals have not been contacted and provided with the usual opportunity to provide their views on the disclosure of the records at issue. The appellant's relationship with these individuals was taken into consideration by the Ministry.

The Ministry carefully considered whether it would be possible to release any additional nonexempt information from the records at issue. However, the Ministry concluded that further severing was not feasible in this instance.

### **Analysis/Findings**

With respect to the remaining personal information in the records, I find that the Ministry disclosed as much of each responsive record as could reasonably be disclosed without disclosing material which is exempt. I find that in denying access to the undisclosed portions of the remaining portions of the records, 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.

### **ORDER:**

1. I uphold the Ministry's decision to deny access to the portions of the records containing the personal information of identifiable individuals other than the appellant, not already known to the appellant.

2. I order the Ministry to provide the appellant with copies of the relevant portions of the records that contain the personal information already known to her by **July 3, 2007**. For clarity, I have provided the Ministry with a highlighted version of the records identifying the portions that should not be disclosed.
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 pursuant to Provision 2, upon my request.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ May 30, 2007