



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2759**

**Appeal PA-060181-2**

**Ministry of Community Safety and Correctional Services**



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## **NATURE OF THE APPEAL:**

The requester submitted a four part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Community Safety and Correctional Services (the Ministry) for the following information:

1. Complete repair records up to and including the present date for [an identified laser unit].
2. The training records and training certificates in the use of Laser and Radar speed monitoring devices [...] for [a named Ontario Provincial Police (OPP) constable].
3. The work schedule and work assignments for [the OPP constable] on September 2, 3, 4, 5, 2005.
4. All notes and records regarding all traffic tickets issued by [the OPP constable] on September 2, 3, 4, 5 [of] 2005.

In response, the Ministry issued a decision letter, identifying 28 pages of records responsive to the requester's request. In its letter, the Ministry advised that there are no records responsive to part 1 of the request. With regard to records responsive to parts 2 and 3, the Ministry stated that these records were excluded from the scope of the *Act* pursuant to section 65(6) (labour and employment records) of the *Act*. The Ministry denied access to the records responsive to part 4 of the request pursuant to the discretionary exemption in section 49(a), read with sections 14(1)(l) (law enforcement) and 19 (solicitor-client privilege), and the discretionary exemption in section 49(b), read with section 21(1) (personal privacy), of the *Act*.

The requester (now the appellant) appealed that decision to this office and appeal PA-060181-1 was opened. During the course of the mediation stage of the appeal process, the Ministry withdrew its reliance upon section 19. In addition, the Ministry located three additional pages of records (pages 29 – 31). The Ministry denied access to those three pages on the basis that section 65(6) applied to exclude them from the scope of the *Act*. The Ministry also advised that some of the information contained in those three pages was being withheld because it was not responsive to the appellant's request.

Appeal PA-060181-1 proceeded to the adjudication stage of the appeal process. Adjudicator Frank DeVries conducted an inquiry and issued Order PO-2643. In that order, Adjudicator DeVries upheld the Ministry's decision that portions of the records were not responsive to the request. In addition, the Ministry's reliance upon the exclusion in section 65(6) was upheld in part, as was its reliance upon the discretionary exemption in section 49(b), read with section 21(1), for portions of the records.

With regard to pages 29-31 specifically, while Adjudicator DeVries upheld the Ministry's decision that portions of these records were not responsive, he found that section 65(6) did not apply to these records. Accordingly, he ordered the Ministry to make an access decision regarding the responsive portions of pages 29 – 31, pursuant to sections 26, 28 and 29 of the *Act*.

In accordance with Order PO-2643, the Ministry issued a decision letter, dated March 30, 2008, in which it denied access to the responsive portions of pages 29 to 31 of the records, pursuant to the mandatory exemption in section 21(1) (personal privacy) of the *Act*. In support of its section 21(1) claim, the Ministry cited the application of the presumption in section 21(3)(d) (employment or educational history) and the factor in section 21(2)(f) (highly sensitive).

The appellant appealed the Ministry's decision and appeal PA-060181-2 was opened by this office. The parties were unable to resolve the appeal through mediation and the matter was transferred to the adjudication stage for me to conduct an inquiry.

I commenced my inquiry by issuing a Notice of Inquiry and seeking representations from the Ministry. The Ministry submitted representations in response and agreed to share the non-confidential portions of those submissions with the appellant.

I then sought representations from the appellant and included with a Notice of Inquiry a severed version of the Ministry's representations. Portions of the Ministry's representations were severed due to confidentiality concerns. The appellant chose not to submit representations.

## **RECORDS:**

There is one record at issue, comprised of the responsive undisclosed portions of pages 29 to 31 of an identified OPP constable's notes.

## **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 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].

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's representations are brief. The Ministry indicates that it is relying on paragraphs (b) and (h) of the definition of "personal information" cited above. It states that the record at issue contains personal information of the type listed in those paragraphs and that it relates to a

named OPP constable. It does not elaborate further on this particular issue. However, under the discussion of the application of the section 21(1) personal privacy exemption, the Ministry states that the severed portions of the record consist of personal information that relates to a named OPP constable's employment and educational history.

The Ministry relies on Order M-609, in which Adjudicator Donald Hale found that information regarding training completed by firefighters employed by the Town of Oakville, pertaining to the handling of hazardous and radioactive waste, qualified as the personal information of those firefighters and was exempt under section 14(1), the municipal *Act* equivalent of section 21(1). In making this finding, Adjudicator Hale found that the information in question related to the educational history of the individual firefighters and that disclosure of this information would constitute a presumed unjustified invasion of their personal privacy under section 14(3)(d).

As stated above, the appellant did not submit representations.

### **Analysis and findings**

On my review of the severed portions of the record and the Ministry's representations, I am satisfied that the information at issue does not qualify as the personal information of the OPP constable or any other identifiable individual. I note that the record contains information about laser training taken by the identified OPP constable as well as the name of another police constable who delivered the training. In my view, the information at issue is not "about" the police officers in their personal capacity, nor would disclosure reveal anything about these two individuals of a personal nature. In my view, it constitutes information about them in a professional context.

Previous decisions of this office have drawn a distinction between information relating to an individual in a *personal capacity* and information relating to an individual in a *professional or official government capacity*. As a general rule, information associated with a person in a professional or official government capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition of "personal information" [Orders P-257, P-427, P-1412, P-1621].

In Order PO-2435, Assistant Commissioner Brian Beamish discussed the distinction between information relating to an individual in a *personal capacity* and information relating to an individual in a *professional or official government capacity*, following the reasoning of former Assistant Commissioner Mitchinson in Order PO-2225.

Order PO-2435 involved a request submitted to the Ministry of Health and Long-Term Care (the Ministry of Health) under the provincial *Act* for access to all records relating to the province's e-Physician Project, including the Smart Systems for Health Agency. The Ministry of Health sought to exempt the names of individual consultants together with their per diem rates and contract ceiling amounts that relate to them, section 21(1) of the *Act*. In addressing the distinction between personal and professional information and the application of the personal

privacy exemption in section 21(1) of the provincial *Act*, Assistant Commissioner Beamish stated:

In determining whether information relating to a named individual is “personal information”, the appropriate approach is to look at the *capacity* in which the individual is acting and the *context* in which their name appears. This was enunciated in Order PO-2225 where Assistant Commissioner Tom Mitchinson considered the definition of “personal information” and the distinction between information about an individual acting in a business capacity as opposed to a personal capacity. The Assistant Commissioner posed two questions that help to illuminate this distinction:

Based on the principles expressed in these [previously referenced] orders, the first question to ask in a case such as this is: “*in what context do the names of the individuals appear*”? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

....

The analysis does not end here. I must go on to ask: “*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*”? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

In applying Assistant Commissioner Mitchinson’s analysis to the current appeal, the context in which the names, per diems and ceiling amounts appear is not inherently personal, but is one that relates exclusively to the professional responsibilities and activities of these individuals. As evidenced by the contents of the records themselves, each of these individuals is participating as consultants in a professional business capacity. For example, on the face of Record 2, each individual is listed as a consultant. Further, as is clear from the wording of the [associated business cases] that form part of Record 3, the selected individuals are being chosen for their professional, rather than personal, qualifications and experience.

Similar to the business context present in Order PO-2225, the professional context in which the individuals’ names appear here removes them from the personal sphere. In addition, there is nothing about the names, per diem or ceiling amounts that, if disclosed, would reveal something of a personal nature about the various consultants. [...]

The approach enunciated by Assistant Commissioner Mitchinson in Order PO-2225, and applied by Assistant Commissioner Beamish in Order PO-2435, is the current approach followed by this office when analyzing the distinction between information relating to an individual in a personal capacity and information relating to an individual in a professional or official government capacity. I apply it to the circumstances of this case.

The information at issue in this case arises in a professional, as opposed to a personal, sphere. The record simply identifies the type of training taken by an OPP constable and confirms the qualifications and credentials that this particular police officer possesses. The record also identifies the name of the police constable that delivered training. Similarly, I find that I have not been provided with evidence to establish that there is something about this information that if revealed would reveal something of a personal nature about either police constable.

While I acknowledge the Ministry's reliance on Adjudicator Hale's finding in Order M-609, in my view, the conclusion reached in that case should be distinguished for two reasons. First, the decision in Order M-609 was arrived at prior to the development of this office's current approach to this issue that started with Order PO-2225, and which has been applied in more recent decisions (see, for example, Orders PO-2435 and MO-2172). Second, in my view, the circumstances in Order M-609 were different from those in this case. In M-609 Adjudicator Hale found that the "information about the training course successfully completed by each firefighter [was] quite detailed." In addition, Adjudicator Hale was impressed by the "nature of the training received and the duration of the course", finding that "its successful completion represent[ed] a significant upgrade to the educational background of those who [were] so enrolled." On that basis, he found that the firefighters information qualified as personal information and he applied the section 14(3)(d) presumption in finding the information exempt under section 14(1). In contrast, the information at issue in this case is generic in nature and very limited in both scope and detail. The information at issue simply reveals the general nature of what appears to be standard laser training taken by the OPP constable as well as the identity of the police officer who delivered the training. The record does not provide any detailed information about the training or its duration.

In conclusion, I am satisfied that the information at issue does not contain "personal information" as that term is defined in section 2(1) of the *Act*. Having made this finding, I do not need to consider the application of the section 14(1) personal privacy exemption in the circumstances of this case. I will order the Ministry to disclose the record at issue to the appellant, with the exception of the information identified as non-responsive in Order PO-2643.

## **ORDER:**

1. I order the Ministry to disclose the record at issue to the appellant in part by **March 27, 2009** but not before **March 20, 2009**. To be clear, the Ministry must disclose the record to the appellant, with the exception of those portions that have been previously identified as not-responsive in accordance with Order PO-2643.

2. In order to verify compliance, I order the Ministry to provide me with a copy of the record as ordered disclosed pursuant to Provision 1 of this order.

Original signed by: \_\_\_\_\_  
Bernard Morrow  
Adjudicator

February 20, 2009 \_\_\_\_\_