



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

# **ORDER PO-2887**

## **Appeal PA09-321**

### **Ministry of Community Safety and Correctional Services**



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## NATURE OF THE APPEAL:

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

[D]ocumentation related to an incident that occurred [on a specific date in 2008] that was reported to [a named] OPP Detachment. The matter involved [a named individual] who reported to police that an anonymous typewritten report was left on her car.

I am aware the occurrence number is: [identified number]

I request a copy of the full police report. I also request any other document that contains my name or is related to the above incident during the period November 1<sup>st</sup> to the present.

The Ministry located the responsive records and issued a decision letter denying access to the records pursuant to the discretionary exemptions at section 49(a) (discretion to refuse requester's own information) read in conjunction with sections 14(1)(l) (unlawful act) and 14(2)(a) (law enforcement), and at section 49(b) (personal privacy), read in conjunction with the presumption at section 21(3)(b) (investigation into a violation of law) and the factor at section 21(2)(f) (highly sensitive) of the *Act*. In its decision letter, the Ministry also noted:

[S]ome information, such as computer-generated text associated with the printing of reports is not responsive to the request and has been marked N/R.

The requester, now the appellant, appealed the Ministry's decision.

During mediation, the appellant removed the police codes, severed under section 14(1)(l) and the date the record was printed, severed as non-responsive, from the scope of the appeal. As no further mediation was possible, the file was transferred to the adjudication stage of the appeal process.

The adjudicator previously assigned to this file began the inquiry into this appeal by sending a notice of inquiry, setting out the facts and issues, to the Ministry and the individual named in the request (affected party), initially. The Ministry provided representations in response. The affected party also submitted brief representations.

In the Ministry's representations, it indicates that it is withdrawing its claim that the discretionary exemption at section 49(a), read in conjunction with section 14(2)(a), applies. Accordingly, sections 14(2)(a) and 49(a) of the *Act* are no longer at issue in this appeal.

The previous adjudicator then sent the notice of inquiry, modified to reflect the Ministry's withdrawal of sections 14(2)(a) and 49(a), to the appellant, inviting representations. The previous adjudicator attached a copy of the Ministry's non-confidential representations to the notice of

inquiry. For confidentiality reasons, she did not enclose a copy of the affected party's representations. The appellant submitted representations in response. The appellant asked that her representations not be shared.

The file was subsequently transferred to me to complete the adjudication process.

## **RECORDS:**

There are two pages of records at issue in this appeal: the Occurrence Report Summary and the General Occurrence Report for the identified occurrence number. All of the information has been withheld from the appellant.

## **DISCUSSION:**

### **PERSONAL INFORMATION/UNJUSTIFIED INVASION OF PERSONAL PRIVACY**

In order to determine which sections of the *Act* apply, it is necessary to decide whether the record contains personal information, and if so, to whom that information relates. The term "personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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 (paragraph (h) of the definition of personal information in section 2(1) of the *Act*).

The Ministry submits, and I agree, that the records contain the personal information of the appellant as well as of another identifiable 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 exceptions to this general right of access.

Under section 49(b) of the *Act*, where a record contains the personal information of both the requester and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Section 49(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the institution the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 49(b) applies, sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. 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.

In this appeal, the Ministry submits that the presumption in section 21(3)(b) applies. That 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

The Ministry submits that the personal information in the records was compiled and is identifiable as part of an OPP investigation into a possible violation of law. In its confidential representations, the Ministry describes the nature of the incident and explains why the OPP's involvement pertained to a possible violation of law.

Neither the appellant, nor the affected party, wished any portion of their representations to be shared. I have, therefore, decided not to refer to them in this order, except to note the very personal issues raised by each of the parties and the relevance some of these issues may have if the factors in section 14(2) were to be considered. Given my findings below, however, there is no need for me to consider the factors in section 14(2).

Based on the Ministry's submissions and my review of the record, I find that the personal information in the records was compiled and is identifiable as part of an OPP investigation into a possible violation of law. Accordingly, I conclude that the presumption in section 21(3)(b) applies to the personal information contained in the records.

As I have found that the presumption at section 21(3)(b) applies, the factors in section 21(2) cannot rebut this presumption (see the Divisional Court decision in *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767). I am therefore satisfied that disclosure of the personal information in the record is presumed to constitute an unjustified invasion of the personal privacy of the individuals to whom it relates.

### **Severance**

Where a record contains exempt information, section 10(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information. A head will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed (Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)).

I find that significant portions of the personal information of the other identifiable individual contained in the records cannot be reasonably severed as it is intertwined with that of the appellant. However, I also conclude that certain portions of the records are written in such a way that the personal information of the other individual contained in them can be easily separated from that pertaining solely to the appellant, and can, therefore, be severed out. In addition, the record contains some standard descriptive or anonymized information and information about the OPP officers involved in their official capacity. This information can also be severed from that pertaining to the other identifiable individual. The remaining portions cannot be described as "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Moreover, I find that the presumption at section 21(3)(b) cannot apply to the portions of the records that pertain solely to the appellant or which pertain to descriptors on the form itself, the anonymous note (which the appellant already has a copy of) and/or the OPP officers involved.

### **Discretion**

As I have indicated above, section 49(b) gives an institution the discretion to refuse a requester's own personal information where it determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy. This discretion may be exercised in favour of disclosure, or in favour of withholding the information. In this appeal, the Ministry has provided submissions on the reasons why it chose to withhold the information. I find no error in its exercise of discretion under section 49(b).

Accordingly, with the exception of the portions of the records that can be severed, I uphold the Ministry's decision to withhold the remaining personal information from disclosure pursuant to section 49(b). I have highlighted the portions of the records that pertain solely to the appellant and/or the OPP officers and/or descriptive information on the copy of the records that I am sending to the Ministry with the copy of this order.

### **ORDER:**

1. I order the Ministry to disclose the information that I have highlighted in green on the copies of the records I am attaching to this order by **June 4, 2010 but not before May 28, 2010**.
2. I uphold the Ministry's decision to withhold the remaining information from disclosure.
3. In order compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records that have been disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_  
April 29, 2010

