

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3226

Appeal PA12-86

Ministry of Community Safety and Correctional Services

June 28, 2013

Summary: The requesters sought copies of the records related to a fire inspection investigation. This order finds that the personal information in the record of the affected person is exempt by reason of the mandatory personal privacy exemption in section 21(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1) (definition of personal information), 21(1), 21(3)(b); *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4., as amended.

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for access to information related to a report of the Ontario Fire Marshall's Office. The request stated in part:

In reference to an inspection performed on [date] at the [named place].

Such inspection was performed by the local fire chief ... assisted by the Office of the Fire Marshall Program Specialist... We hereby request to receive copy of the notes and reports prepared by the Fire Marshall Program Specialist ... and submitted to [name] of the Fire Marshall Office.

We declare hereby being the OWNERS of the [named place] and believe we are entitled to receive such copies of the said documents and hereby request to receive them.

[2] The ministry located the responsive records, which consisted of a fire department inspection report (the report) and the notes of the inspector, and denied access to them in their entirety, relying on the law enforcement exemptions in sections 14(1) and (2), in conjunction with section 49(a), and the personal privacy exemption in sections 21(1) or 49(b) of the *Act*.

[3] The requesters, now the appellants, appealed that decision.

[4] During the mediation process, the ministry confirmed that the investigation was ongoing. As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry.

[5] I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the ministry and the named fire department. The named fire department responded that it no longer required the responsive report. In response to this, the ministry disclosed to the appellants the complete report in its entirety and the notes, except for the information in the notes that it withheld under the personal privacy exemption in sections 21(1) or 49(b). Therefore, the information withheld under the discretionary law enforcement exemptions is no longer at issue.

[6] The ministry provided representations on the application of the personal privacy exemption to the withheld information in the notes. The appellants were provided with a Notice of Inquiry and a copy of the ministry's representations but they did not provide representations in response.

[7] In this order, I partially uphold the ministry's decision that the information at issue is subject to the personal privacy exemption.

RECORD:

[8] The information remaining at issue consists of the withheld information from the inspector's notebook.

ISSUES:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

B. Does the mandatory exemption at section 21(1) apply to the information at issue?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[9] 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;

[10] 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.¹

[11] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[12] 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.²

[13] 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.³

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[15] The ministry submits that the personal information in the record belongs to individual who the inspector interviewed during the fire department's inspection of the building. The ministry states that this personal information includes the name of this individual, his involvement with the inspection and his association with the building.

¹ Order 11.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Analysis/Findings

[16] Based on my review of the record, and taking into account the ministry's representations, I find that it does not contain the personal information of the appellants. Therefore, the discretionary personal privacy exemption in section 49(b) cannot apply to this information.

[17] I agree with the ministry that some of the information at issue in the record constitutes the personal information of an identifiable individual (the affected person). Although this information relates to the affected person in a business capacity, I find that it qualifies as personal information as it reveals something of a personal nature about this individual, namely, his personal opinions or views in accordance with paragraph (e) of the definition of personal information in section 2(1).

[18] Some of the information at issue that relates to the affected person relates to him in a business capacity and it cannot, therefore, be exempt under section 21(1), which only applies to personal information. No other exemptions have been claimed for this information and I will order it disclosed.

[19] I will now consider whether the personal information of the affected person in the record is subject to the mandatory personal privacy exemption in section 21(1).

B. Does the mandatory exemption at section 21(1) apply to the information at issue?

[20] 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.

[21] The sections 21(1)(a) to (e) exceptions are relatively straightforward. The section 21(1)(f) exception is more complex, and requires a consideration of additional parts of section 21. Section 21(1)(f) reads:

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.

[22] If sections 21(1)(a) to (e) or section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21(1). In this appeal, these sections do not apply.

[23] 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).

[24] 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).

[25] The ministry relies on the presumption in section 21(3)(b) and states that the personal information in the record was collected as a result of a fire department inspection where charges could have resulted. It points out that the affected person has not consented to the disclosure of his personal information. Section 21(3)(b) reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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;

[26] The record contains the notes of a fire department inspector, which were recorded as part of an investigation into a violation of law under the *Fire Protection and Prevention Act, 1997 (FPPA)*. The presumption can apply to a variety of investigations, including those relating to by-law enforcement⁵ and violations of the Ontario Human Rights Code.⁶

[27] In this appeal, I find that the information at issue was compiled and is identifiable as part of an investigation into a possible violation of law under the *FPPA*. Accordingly, I find that the presumption in section 21(3)(b) applies to all of the personal information at issue in the record.

[28] 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. The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.

[29] As section 21(3)(b) applies, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21(1). 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.⁷ In this

⁵ Order MO-2147.

⁶ Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

⁷ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

appeal, as stated above, section 21(4) does not apply. Furthermore, section 23 has not been raised by the appellants.

[30] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it also cannot be rebutted by one or more factors or circumstances under section 21(2).⁸

Conclusion

[31] In conclusion, I have carefully considered the content of the information at issue and the ministry's representations. I find that disclosure of the personal information in the record is presumed to constitute an unjustified invasion of the personal privacy of the affected person and that this information is exempt under section 21(1) of the *Act*.

ORDER:

1. I order the ministry to disclose the information in the record that I have found not to be personal information to the appellants by **August 1, 2013** but not before **July 26, 2013**. The information that is to be disclosed is highlighted on the copy of the record sent to the ministry with this order.
2. I uphold the ministry's decision to withhold the remaining information.
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 record that is disclosed to the appellants pursuant to order provision 1.

Original Signed By: _____
Diane Smith
Adjudicator

_____ June 28, 2013

⁸ *John Doe*, cited above.