



Information and Privacy
Commissioner/Ontario

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

ORDER P-1401

Appeal 9600444

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to all information gathered in the course of the Ministry's Special Investigations Unit (the SIU) investigation of an incident in which the requester was shot by a police officer following a bank hold-up. The Ministry located a number of responsive records and granted access to several of them. Access to the remaining 301 pages of records, comprised of reports, memoranda, witness statements, photographs and correspondence, was denied under the following exemptions contained in the Act:

- law enforcement - section 14(2)(a)
- solicitor-client privilege - section 19
- invasion of privacy - sections 21(1) and 49(b)
- discretion to refuse requester's own information - section 49(a)

The requester, now the appellant, appealed the Ministry's decision. A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from the Ministry only.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records to determine if they contain personal information and, if so, to whom the personal information relates. In my view, because each of the records concerns the shooting incident involving the appellant, all of the records contain the personal information of the appellant.

I further find that the records also contain the personal information of a large number of other identifiable individuals, particularly the witnesses to the shooting. In addition, the personal information of the appellant is inextricably intertwined with that of a number of other individuals, making it impossible for the Ministry to discern where one individual's personal information begins and another's ends.

INVASION OF PRIVACY

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

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal

information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Ministry states that the personal information which has been withheld was compiled as part of the SIU investigation into a potential violation of law, the commission of a criminal offence by the police officer who was involved in the incident. Accordingly, the Ministry argues that the presumption in section 21(3)(b) applies to exempt this information from disclosure. This section provides:

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.

Based on the submissions of the Ministry and my review of the records, I find that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, the Criminal Code. I have also found above, that the Ministry cannot reasonably be expected to separate the personal information of the appellant from that of a number of other individuals. The information does not fall within the types of information listed in section 21(4). The appellant has not raised the possible application of section 23.

Because the presumption in section 21(3)(b) applies to the information contained in the records, I find that their disclosure would be an unjustified invasion of the personal privacy of individuals other than the appellant. For this reason, I find that the information contained in the records is exempt under section 49(b) of the Act.

ORDER:

I uphold the Ministry's decision to deny access to the records.

Original signed by: _____

Donald Hale
Inquiry Officer

June 5, 1997