

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4173

Appeal PA19-00569

Ministry of the Solicitor General

August 6, 2021

Summary: The appellant sought access, from the Ministry of the Solicitor General, to all Ontario Provincial Police records relating to his property over a specific two-month period. The ministry denied the appellant access to the records, initially relying on the discretionary exemptions in sections 49(a) (discretion to refuse requester's own personal information) and 49(b) (personal privacy) of the *Freedom of Information and Protection of Privacy Act* based on a mistaken belief that the records contained personal information about the appellant. The ministry subsequently issued a revised decision confirming it relied on the mandatory exemption in section 21(1) (personal privacy) and the discretionary exemption in section 14(1) (law enforcement) to deny access to the records. In this order, the adjudicator upholds the ministry's decision that the records, in their entirety, are exempt from disclosure under section 21(1) and she dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, sections 2(1) (definition of "personal information"), 21(1) and 21(3)(b).

Cases Considered: *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 OR (3d) 767 (Div. Ct.).

OVERVIEW:

[1] This appeal considers an individual's right to access the personal information of other individuals in police records relating to his property, but not to him. The Ministry of the Solicitor General (the ministry) received a request from the appellant under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to Ontario Provincial Police (OPP) records relating to his property during two months in 2019. In his request, the appellant specified that he sought access to all calls and reports made to the Tillsonburg detachment of the OPP regarding his property, including information on who called the OPP and why, what action the OPP took in response, and the outcome of the

calls and reports.

[2] In response to the appellant's request, the ministry located responsive records and issued a decision denying access to all of them. To deny access, the ministry relied on the discretionary exemptions at section 49(a) (discretion to refuse access to requester's own personal information), in conjunction with section 14(1) (law enforcement), and at section 49(b) (personal privacy), with reference to the presumption in section 21(3)(b) (investigation into violation of law). The ministry also withheld some records under the exclusion at 65(5.2) (records relating to a prosecution) of the *Act* and portions of some records on the basis that they were not responsive to the appellant's request. Regarding the records that the ministry claimed were excluded from the application of the *Act* under section 65(5.2), the ministry stated that the appellant may wish to seek access to them once all proceedings in relation to the prosecution have been completed.

[3] The appellant was not satisfied with the ministry's decision and appealed it to the Information and Privacy Commissioner of Ontario (IPC). The IPC attempted to mediate the appeal. During mediation, the appellant asserted that, as the property owner, he should be given access to information about the OPP's visits to his property. He clarified that he wished to pursue access to all of the information in the withheld records, except for the names of any individuals.

[4] Also during mediation, the ministry clarified that it had claimed the discretionary exemptions in sections 49(a) and 49(b) based on a mistaken belief that the records contain information about the appellant. The ministry stated that because the records do not contain any information about the appellant, the mandatory exemption under section 21(1) (personal privacy) of the *Act* applies and the appellant does not have a right of access to them. As a result, the ministry issued a revised access decision confirming that it relies on the mandatory personal privacy exemption in section 21(1) and the discretionary law enforcement exemption in sections 14(1)(c) and 14(1)(l) to withhold the records at issue. The ministry's revised access decision also stated that some information, such as printing information, was removed from the records because it was deemed not responsive to the request.

[5] A mediated resolution of the appeal was not possible and the appellant asked that the appeal be transferred to the adjudication stage of the appeal process. As the adjudicator of this appeal, I decided to conduct an inquiry under the *Act*, and I invited and received representations from the ministry and the appellant. In this order, I uphold the ministry's decision to deny access to the records at issue and I dismiss the appeal.

RECORDS:

[6] The records at issue in this appeal consist of 31 pages of OPP reports and a witness statement. The 16 OPP reports include Occurrence Summaries, Supplementary Occurrence Reports and General Reports.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1)? If so, to whom does it relate?
- B. Does the mandatory exemption at section 21(1) apply to the information at issue?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) of the Act? If so, to whom does it relate?

[7] In order to determine which sections of the *Act* apply, I must first determine whether the records contain "personal information" and, if so, to whom it relates. "Personal information" is defined in section 2(1) of the *Act* as recorded information about an identifiable individual, and includes the types of information specified at paragraphs (a) through (h) of the definition.

[8] The ministry submits that the records contain the personal information of a number of individuals other than the appellant, and I agree. The appellant does not directly address this issue in his representation, but he confirms that he does not seek access to the names of the individuals identified in the records.

[9] I find that the records at issue contain recorded information about various individuals that falls within the following paragraphs of the definition of personal information in section 2(1) of the *Act*:

(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,

(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,

(g) the views or opinions of another individual about the individual,

(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[.]

[10] I find that the records contain the personal information of individuals other than the appellant. The records contain details of incidents involving individuals who had some connection to the property such that the municipal address for the property appears in them. While the appellant is the property owner, he does not reside at the property and

none of the incidents detailed in the records involves or identifies him. Because the records do not contain the appellant's personal information, he does not have a general right of access to them under the *Act*. The appellant's ability to access the records, if any, must be determined under the mandatory personal privacy exemption at section 21(1) of the *Act*, relied on by the ministry.

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

[11] 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. Section 21(1) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,...

[12] The section 21(1)(a) to (e) exceptions are relatively straightforward. The section 21(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex and requires a consideration of additional parts of section 21. If the information fits within any of paragraphs (a) to (e) of section 21(1), it is not exempt from disclosure under section 21(1). Under section 21(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[13] There is no suggestion from the parties that the section 21(a) to (e) exceptions to the exemption apply, and I find that they do not. As for section 21(1)(f), although the appellant argues that he should be granted access to the records because he is the owner of the property in question, he does not address section 21(1)(f) directly. Instead, he describes his concerns about the OPP's actions regarding the individuals that he claims unlawfully took possession of his property and significantly damaged it. He also names the individuals whose personal information he believes is contained in the records.

[14] If any of paragraphs (a) to (h) of section 21(3) 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.¹ The ministry claims that the presumption in section 21(3)(b) applies to the records. Section 21(3)(b) reads:

21.(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(b) 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[.]

[15] The ministry submits that the OPP compiled all of the records at issue as part of its law enforcement activities investigating possible violations of law. It adds that because the section 21(3)(b) presumption only requires that there be an investigation into a possible

¹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 OR (3d) 767 (Div. Ct.).

violation of law, all of the records at issue in this appeal fall within the scope of the presumption. The ministry asserts that because the records do not contain any information about the appellant, the mandatory personal privacy exemption in section 21(1) applies and the appellant does not have a right of access to them. The ministry adds that the *Act* does not grant the appellant the right to access affected third party personal information contained in law enforcement records simply because the appellant owns property related to where OPP investigations occurred.

Analysis and findings

[16] Having reviewed the records at issue, I agree with the ministry. I find that all of the OPP reports and the witness statement at issue were compiled by the OPP and are identifiable as part of an OPP investigation into a possible violation of law within the meaning of section 21(3)(b). As a result, I find that disclosure of the records is presumed, under section 21(3)(b) of the *Act*, to constitute an unjustified invasion of personal privacy of the individuals whose personal information is contained in the records.

[17] The appellant's representations — that as the property owner, he should have a right to access the records — are not consistent with the access scheme set out in the *Act*. Nor do the appellant's representations establish that disclosure of the OPP records at issue would not be an unjustified invasion of personal privacy as contemplated by the exception to the mandatory exemption in section 21(1) found in section 21(1)(f) of the *Act*.

[18] In addition, the appellant does not submit that the situations described in paragraphs (a) to (d) of section 21(4), which do not constitute an unjustified invasion of personal privacy, apply in the circumstances of this appeal. Finally, the appellant does not claim a public interest in disclosure of the records at issue in accordance with section 23. Accordingly, I find that sections 21(1)(f), 21(4) and 23 do not apply in this appeal.

[19] Having found that disclosure of the records is presumed, under section 21(3)(b) of the *Act*, to be an unjustified invasion of personal privacy of the individuals identified in them, I find that the records are exempt from disclosure, in their entirety, under the mandatory personal privacy exemption in section 21(1) of the *Act*.

ORDER:

I uphold the decision of the ministry and dismiss the appeal.

Original Signed by: _____
Stella Ball
Adjudicator

_____ August 6, 2021