

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4525

Appeal PA22-00027

Ministry of the Solicitor General

June 21, 2024

Summary: The appellant sought access from the Ministry of the Solicitor General (the ministry) to statements of certain individuals in police reports regarding a property damage dispute with his neighbour. The ministry denied access to the requested information, relying on the discretionary personal privacy exemption in section 49(b).

In this order, the adjudicator upholds the ministry's decision to withhold the statements under section 49(b).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2(1) (definition of "personal information"), 21(2)(f), 21(3)(b), and 49(b).

OVERVIEW:

[1] This appeal considers a request for an individual's access to statements in police reports regarding a dispute with his neighbour about property damage.

[2] The Ministry of the Solicitor General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for the following information:

I am requesting copies of all records, audio recordings from 911 calls and any other sources, reports, and notes in possession. Audio recordings can

be sent digitally. In particular, I will need all information associated with occurrence numbers [four numbers].

[3] The request was subsequently narrowed to Ontario Provincial Police (OPP)¹ reports, officer notes, witness statements, and 911 call recordings for all incidents since 2003 occurring at the requester's address.

[4] The ministry granted partial access to the requested records withholding information under the discretionary personal privacy exemption at section 49(b).

[5] The requester, now the appellant, appealed the ministry's decision to the Information and Privacy Commissioner (the IPC).

[6] As mediation did not resolve the appeal, it moved to the adjudication stage, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought the parties' representations.

[7] In his representations, the appellant confirmed that the only information that he seeks access to are the statements made by certain individuals to the OPP. He also advised that he did not want these individuals notified of his request and subsequent appeal.

[8] In this order, I uphold the ministry's decision that the statements are exempt by reason of section 49(b).

RECORDS:

[9] At issue are the statements of three individuals, whose names were provided to the OPP by the appellant to speak to about the property dispute.²

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?
- C. Did the ministry exercise its discretion under section 49(b)? If so, should the IPC uphold the exercise of discretion?

¹ The ministry responds to requests made to the OPP, under the *Act*.

² These statements are found in the police reports and are replicated in the handwritten police officer notes in the records.

DISCUSSION:

Issue A: Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?

[10] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom the personal information relates.

[11] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.”

[12] Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.³

[13] Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.⁴

[14] Section 2(1) of the *Act* gives a list of examples of personal information. It reads, in part:

“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,

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

See also sections 2(3) and 2(4), which exclude some information from the definition of personal information. These sections read:

(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.

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

- (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 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.

[15] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."⁵

[16] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.⁶ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁷

Representations

[17] The ministry submits that the information in the records includes personal information of individuals who provided statements to the OPP for the purpose of their investigation into a neighbour dispute involving property damage. It further submits that due to the subject matter of the records, they cannot be severed to remove the personal information.

[18] The appellant states that he already knows the identity of the three individuals whose statements he wants access to as he gave the OPP their names and contact information and asked the OPP to interview them. He seeks access to the statements they made to the OPP.

⁵ Order 11.

⁶ Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

⁷ See sections 21(1) and 49(b).

Findings

[19] I find that the records contain information that qualifies as the personal information of both the appellant and other individuals. This personal information includes both the appellant's and the other individuals' names, sex, dates of birth, address, phone numbers, and their opinions in accordance with paragraphs (a), (d), (e), (g) and (h) of the definition of personal information in section 2(1).

[20] I agree with the ministry that disclosure of the statements, even without names, would identify the individuals who made the statements.

[21] I find that the individuals who made the statements, made them in their personal capacity, as they were discussing the neighbour dispute that the appellant complained to the OPP about.

[22] Therefore, as the records contain the personal information of both the appellant and other individuals, I will consider whether the discretionary personal privacy exemption in section 49(b) applies to them.

Issue B: Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?

[23] 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 some exemptions from this right.

[24] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[25] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of other individual's personal privacy.

[26] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b).

[27] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

[28] If any of the exceptions in section 21(1)(a) to (e) apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 49(b). Neither of the parties have claimed that any of these exceptions apply and I find that none of them do.

[29] Sections 21(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 21(2) or (3) apply. Section 21(4) does not apply in this appeal.

Representations

[30] The ministry states that it has withheld the personal information belonging to the individuals who supplied the statements to the OPP under section 49(b) because its disclosure would be an unjustified invasion of their personal privacy.

[31] To withhold this information, the ministry relies on the presumption against disclosure in section 21(3)(b), which reads:

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.

[32] The ministry states that the records were created because the OPP was investigating a contentious dispute between neighbours, which could have led to charges being laid depending on the outcome of the investigation. In support, it refers to Order PO-3145, which found that records compiled by police regarding a dispute between neighbours, which did not result in charges being laid, was also exempt under section 21(3)(b).

[33] The ministry also relies on the factor favouring privacy protection in section 21(2)(f), which reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is highly sensitive.

[34] In support of its position, the ministry relies on Order P-1618, where the IPC found that the personal information of individuals who are "complainants, witnesses or suspects" as part of their contact with the OPP is "highly sensitive" for the purpose of section 21 (2)(f). The ministry further relies on Order PO-3712, which upheld the application of section 21(2)(f) where consent had not been provided by the individuals in respect of the disclosure of their personal information contained in law enforcement investigation records.

[35] The ministry states that if the personal information in the records is ordered disclosed, the individuals will permanently lose control over personal information in which they have an interest, as disclosure to the appellant therefore, in effect, constitutes disclosure to the world. The ministry submits this type of invasion of privacy can be expected to be especially distressing given the apparently adversarial nature of the neighbour dispute.⁸

[36] In his representations, the appellant provided examples of what he states amounts to harassment by his neighbour and indicates that he fears retaliation from them were they notified of his request. He states however, that he would like access to the statements given to the OPP by the individuals who he had asked the OPP to interview.

Findings

[37] The records relate to ongoing property disputes between the appellant and his neighbour that occurred in 2021. From the records, it is clear that the OPP investigated these incidents, decided not to lay charges, and advised the appellant that these incidents were civil matters.

[38] As noted above, the ministry relies on the presumption against disclosure in section 21(3)(b) to withhold the information. Section 21(3)(b) requires only that there be an investigation into a possible violation of law.⁹ So, even if criminal proceedings were never started against the individual, section 21(3)(b) may still apply.¹⁰

[39] I find that the personal information at issue was compiled and is identifiable as part of an investigation into possible violations of law, being possible criminal harassment of the appellant by the appellant's neighbour. Therefore, I find that the presumption against disclosure at section 21(3)(b) applies to the information at issue.

[40] I also find that the personal information of other individuals in the records relates to highly sensitive situations involving the neighbour's interactions with the OPP. In my view, based on my review of the records, the appellant and his neighbour are involved in a longstanding personal dispute, where each has an animus towards the other. Therefore, I find that the factor in section 21(2)(f), that weighs against disclosure, applies as the personal information of the appellant's neighbour is highly sensitive.

[41] Section 21(2)(f) is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.¹¹ For example, personal information about witnesses, complainants or suspects

⁸ The ministry relies on Order PO-3145.

⁹ Orders P-242 and MO-2235.

¹⁰ The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

¹¹ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

in a police investigation may be considered highly sensitive.¹²

[42] The appellant has not raised any factors that favour disclosure. Based on my review of the records at issue and the parties' representations, I find that there are no relevant factors favouring disclosure.

[43] I have considered and weighed the applicable factor in section 21(2)(f) and the presumption in 21(3)(b), both of which weigh against disclosure of the other individuals' personal information. After balancing the interests of the appellant in receiving access to his own personal information and the interests of the neighbour and the other individuals whose personal information is at issue, I find that disclosure of the other individuals' personal information in the records would be an unjustified invasion of their personal privacy under section 49(b). Therefore, I find the withheld information is exempt under section 49(b).

[44] In making this finding, I have considered whether the ministry exercised its discretion regarding information that I have found exempt under section 49(b).

[45] Based on my review of the parties' representations and the records, I find that the ministry exercised its discretion properly. I find that it did not exercise its discretion in bad faith or for an improper purpose, it did not consider irrelevant considerations and did not fail to consider relevant ones.

[46] The ministry considered the appellant's right of access to his own personal information, that exemptions from the right of access should be limited and specific, and the privacy of individuals should be protected. Accordingly, I am upholding the ministry's exercise of discretion and the information at issue in the records is exempt by reason of section 49(b).

ORDER:

I uphold the ministry's decision and dismiss the appeal.

Original Signed By: _____
Diane Smith
Adjudicator

_____ June 21, 2024

¹² Order MO-2980.