

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4595

Appeal PA22-00147

Ministry of the Solicitor General

January 27, 2025

Summary: An individual asked the Ministry of the Solicitor General (the ministry) for access to police records relating to a specified incident on a specified date. The ministry provided some information in a general occurrence report explaining that disclosure of the rest of the information would be an unjustified invasion of another individual's personal privacy (section 49(b)).

In this order, the adjudicator upholds the ministry's decision not to disclose the information it withheld.

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

OVERVIEW:

[1] An individual made a request, under the *Freedom of Information and Protection of Privacy Act* (the *Act*), to the Ministry of the Solicitor General (the ministry) for access to police records relating to an identified incident on a specified date.

[2] The ministry issued a decision granting partial access to the responsive Ontario Provincial Police (OPP) records,¹ citing section 49(b) (personal privacy) of the *Act* to deny

¹ An occurrence summary, a general occurrence report and a letter from the Ontario Bailiff & Lien Registration Corp.

access to some information.²

[3] Dissatisfied with the ministry's decision, the requester (now the appellant) appealed it to the Information and Privacy Commissioner of Ontario (IPC).

[4] A mediator was assigned to explore the possibility of resolution. However, mediation did not resolve the appeal, and it was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*.

[5] The adjudicator initially assigned to the appeal invited and received representations from the ministry, the appellant and an affected party.³ The affected party did not consent to the disclosure of their personal information.

[6] For the reasons that follow, I find that the withheld personal information contained in the fourth paragraph of the general occurrence report is subject to the personal privacy exemption at section 49(b).

RECORDS:

[7] The information at issue is contained in the fourth paragraph under the "Investigation" section of an OPP general occurrence report.

ISSUES:

- A. Does the general occurrence report contain "personal information" as defined in section 2(1) and, if so, whose information is it?
- B. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?

DISCUSSION:

Issue A: Does the general occurrence report contain "personal information" as defined in section 2(1) and, if so, whose information is it?

[8] In order to decide whether section 49(b) applies, I must first decide whether the

² The ministry also relied on section 14(1)(l) (facilitate commission of an unlawful act) and responsiveness to withhold some information contained in the records. During mediation, the appellant stated that he was not interested in pursuing access to the information withheld under section 14(1)(l) and that is not responsive to his request. As such, section 14(1)(l) and responsiveness of the records are no longer at issue in this appeal.

³ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Code of Procedure*.

general occurrence report contains “personal information,” and if so, to whom this personal information relates.

[9] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” Recorded information is information recorded in any format, including paper and electronic records.⁴

[10] Information is “about” the individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Generally, information about an individual in their professional, official, or business capacity is not considered to be “about” the individual if it does not reveal something of a personal nature about them.⁵

[11] 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.⁶

[12] Section 2(1) of the *Act* gives a list of examples of personal information. All of the examples that are relevant to this appeal are set out below:

“personal information” means recorded information about an identifiable individual, including,

(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, 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.

[13] 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.”⁷

[14] It is important to know whose personal information is in the records. If the records contain the requester’s own personal information, their access rights are greater than if

⁴ The definition of “records” in section 2(1) includes paper records, electronic records, digital photographs, videos and maps. The record before me is a paper record located by searching a police database.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁷ Order 11.

it does not.⁸ Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.⁹

[15] The ministry submits that the general occurrence report contains the name of an affected party and information that the affected party provided to the OPP for the purpose of their investigation. The ministry submits that this information is “personal information” as defined in section 2(1) of the *Act*.

[16] Although the appellant submitted representations, his representations did not address whether the general occurrence report contains personal information.

[17] On my review of the general occurrence report, I find that it contains information that qualifies as the personal information of the appellant as well as the personal information of another identifiable individual (the affected party). The personal information of the affected party falls under paragraphs (e), (g) and (h) of the definition of “personal information” under section 2(1) of the *Act*. Specifically, it contains the views or opinions of the affected party and their name as it appears with other personal information. The personal information of the appellant falls under paragraph (h) of the definition of “personal information” as it contains his name along with other information.

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

[18] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[19] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy. If the information fits within any of exceptions in sections 21(1)(a) to (e), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy. If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b).

[20] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). If any of sections 21(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b). Section 21(2) lists various factors that

⁸ 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.

⁹ See sections 21(1) and 49(b).

may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.¹⁰ Some of the factors in section 21(2) weigh in favour of disclosure, while others weigh against disclosure of the withheld personal information. The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).¹¹

[21] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.¹²

Representations, analysis and findings

[22] Neither of the parties have claimed the withheld personal information fits within the exceptions set out in section 21(1)(a) to (e) or that any of the situations in section 21(4) of the *Act* apply. From my review, I agree that neither section 21(1)(a) to (e) nor section 21(4) is relevant in this appeal. As such, I will consider whether any of the factors or presumptions under sections 21(2) and (3) apply.

[23] The ministry claims that the presumption against disclosure at section 21(3)(b) applies. The ministry also submits that the factor at section 21(2)(f) (highly sensitive) applies.

[24] Although the appellant did not specifically refer to the factor at section 21(2)(d), from his arguments it appears that he believes that the disclosure of the withheld personal information is relevant to a fair determination of his rights.

[25] Based on the parties' representations, I will consider the relevance of the presumption at section 21(3)(b) and the factors at sections 21(2)(d) and (f). They state:

(2) 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,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(f) the personal information is highly sensitive;

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

¹⁰ Order P-239.

¹¹ Order P-99.

¹² Order MO-2954.

(b) was compiled and is identified 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;

Section 21(3): presumptions

[26] The ministry submits that the presumption against disclosure at section 21(3)(b) applies as the withheld personal information was collected as part of an investigation being conducted in relation to a possible violation of the *Criminal Code of Canada* (the *Criminal Code*),¹³ specifically trespass to property.

[27] 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.¹⁴ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹⁵

[28] Based on my review of the general occurrence report, I find that the presumption at section 21(3)(b) applies to the personal information it contains. The general occurrence report concerns information about a police investigation relating to a possible trespass violation. The withheld personal information was compiled and is identifiable as part of an investigation into a possible violation of the *Criminal Code*. Although no charges were laid, there need only have been an investigation into a possible violation of law for the presumption at section 21(3)(b) to apply.¹⁶ Section 21(3)(b) therefore applies to weigh against disclosure of the withheld personal information.

Section 21(2): factors

[29] The ministry claims the factor at section 21(2)(f) applies to weigh against disclosure because the withheld personal information is highly sensitive. The ministry submits that to be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed. It submits that the affected party's personal information is contained in the general occurrence report, which is a law enforcement record, and once this record is disclosed it will cease to be subject to any protection from subsequent uses and disclosure.

[30] To support its position, the ministry relies on Order P-1618, where the adjudicator 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 submits that disclosure of the withheld personal information will be distressful to the affected party.

¹³ R.S.C., 1985, c. C-46.

¹⁴ Orders P-242 and MO-2235.

¹⁵ Orders MO-2213, PO-1849 and PO-2608.

¹⁶ Orders P-242 and MO-2235.

[31] From my review of the general occurrence report, I accept that given the circumstances of this appeal, disclosure of the withheld personal information would likely cause the affected party significant personal distress. My finding is in keeping with previous orders issued by the IPC, including Order PO-1618, relied upon by the ministry. As such, I find that disclosure of the withheld personal information of the affected party in the fourth paragraph is highly sensitive. As a result, I find that the factor in section 21(2)(f) applies and weighs against disclosure of the withheld personal information.

[32] From the appellant's representations, it appears that he believes that the disclosure of the withheld personal information would be relevant to a fair determination of his rights. This raises the possible application of the factor weighing in favour of disclosure at section 21(2)(d).

[33] The IPC has found that for section 21(2)(d) to apply, the appellant must establish that:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information to which the appellant seeks access has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.¹⁷

[34] The appellant submits that he wants the withheld personal information because he intends to pursue a complaint with the Law Society of Ontario against the affected party's paralegal. In particular, he explains that he believes that the affected party's paralegal advised the affected party to violate the *Trespass to Property Act (TPA)*¹⁸ after proceedings between the appellant and the affected party had commenced under the *Repair and Storage Liens Act*.¹⁹ The appellant submits that the OPP did not charge the affected party under the *TPA* due to the appellant's statement that she relied on her paralegal's advice.

[35] The appellant also submits that this matter is being dealt with in civil court with the probability of the OPP officer being subpoenaed.

¹⁷ Order PO-1764; see also Order P-312, upheld on judicial record in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

¹⁸ R.S.O. 1990, c. T.21.

¹⁹ R.S.O. 1990, c. R.25.

[36] In order for section 21(2)(d) to apply, all four parts of the test must be established. I am not persuaded by the appellant's representations that section 21(2)(d) applies to the withheld personal information. The appellant has not provided sufficient evidence to establish the application of this factor, specifically he has not established that the personal information that is being withheld from the occurrence report is required in order to prepare for the proceeding or to ensure an impartial hearing. From my review, the withheld personal information would not assist in this matter. As such, I find that section 21(2)(d) does not apply to weigh in favour of disclosure.

[37] Although no other factors have been raised by the parties, I have also considered whether any of the other factors in section 21(2) or any unlisted factor are relevant to this appeal. From my review, none of them appear to apply.

Balancing the applicable factors and presumptions

[38] I have found that the presumption at section 21(3)(b) and the factor at section 21(2)(f) weigh against disclosure of the withheld personal information. I have found that no factors (listed or unlisted) weighing in favour of disclosure apply. As such, in balancing the applicable presumptions and factors, I find that disclosure of the withheld personal information would be an unjustified invasion of the affected party's personal privacy.

[39] Accordingly, I find that the withheld personal information is exempt under section 49(b) subject to my finding on the ministry's exercise of discretion.

Exercise of discretion

[40] The exemption in section 49(b) is discretionary and permits an institution to disclose the information subject to the exemption despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[41] The ministry submits that it has exercised its discretion in not disclosing the withheld personal information in light of the following two considerations:

- the privacy of affected third party individual in contact with the OPP should be protected, unless they consent to the disclosure of their personal information; and
- the position adopted by the ministry is consistent with its current practice with respect to these kinds of records.

[42] Although the appellant submitted representations, his representations did not address the issue of exercise of discretion.

[43] Based on my review of the ministry's representations and the nature and content of the withheld personal information, I find that the ministry properly exercised its discretion to withhold the exempt information pursuant to the discretionary exemption at

sections 49(b) of the *Act*. The only information that the ministry did not disclose to the appellant is the personal information of an affected party; the remainder of information was disclosed to him. I accept that the ministry took into account the above listed factors and I am satisfied that they are relevant considerations in the circumstances of this appeal. I am also satisfied that it did not act in bad faith or for an improper purpose. Accordingly, I uphold the ministry's exercise of discretion in deciding to withhold the exempt information pursuant to the sections 49(b) exemption.

ORDER:

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

Original Signed by: _____
Lan An
Adjudicator

January 27, 2025 _____