



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-261**

**Appeal 900410**

**Ministry of the Solicitor General**



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## O R D E R

On July 8, 1991, the undersigned was appointed Assistant Commissioner and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

### BACKGROUND:

On July 3, 1990, a request for access to notes and statements taken by a police officer at the site of an automobile collision was made to the Ministry of the Solicitor General (the "institution").

Pursuant to section 28(1) of the Act, the institution notified one person who had given a statement about the collision (the "affected person"). The affected person objected to the release of the portion of the record which related to him. The institution subsequently granted partial access to the record, citing sections 14(2)(a) and 21(3)(b) of the Act as the basis for denying access to the severed portion of the record. The requester (the "appellant") appealed the institution's decision.

An Appeals Officer was assigned to investigate the circumstances of the appeal and to attempt to mediate a settlement. During the course of mediation, it was learned that the institution had not notified one other person whose name appeared in the record. At the Appeals Officer's request, the institution contacted this individual, who consented to the release of his personal information. The only remaining issue is whether the severed

portion of the record which consists of the statement given to the police officer by the affected person should be released.

Attempts at further mediation of the appeal were not successful, and the matter proceeded to an inquiry. Written representations were received from the institution, withdrawing its objection to disclosure of the information relating to the affected person. The affected person was subsequently notified of the institution's change of position, but no representations from him were received. Representations were also not received from the appellant, although his lawyer's correspondence with this Office during the course of the appeal contained statements indicating that the information was being sought by the appellant for the "purposes of litigation".

In the circumstances of this appeal, I must balance the right of access to the severed portion of the record against the protection of the affected persons's privacy. Even though the affected person did not make representations during the course of this appeal, it is known that he initially objected to the release of any information which related to him. I cannot construe the absence of representations as consent to the record's release. I will therefore proceed to consider whether release of the severed portion of the record to the appellant would constitute an unjustified invasion of the affected person's privacy.

**ISSUES:**

The issues arising in this appeal are:

- A. Whether the information contained in the severed portion of the record qualifies as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether disclosure of the severed portion of the record would constitute an unjustified invasion of personal privacy pursuant to section 21 of the Act.

**SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in the severed portion of the record qualifies as "personal information", as defined by section 2(1) of the Act.**

The severed portion of the record is a brief summary (twelve lines) of a statement made by the affected person to a police officer investigating a collision between two motor vehicles. The affected person was the driver of one vehicle and the appellant was the driver of the other. The statement is essentially a description of the actions and observations of the affected person while driving. The name of the affected person is not at issue and was disclosed by the institution.

The introductory wording of the definition of personal information contained in section 2(1) of the Act states:

"personal information" means recorded information about an identifiable individual, ...

I have examined the severed portion of the record and, in my view, it contains information which meets the requirements of the definition of personal information; it clearly contains "recorded information about an identifiable individual", namely the affected person.

**ISSUE B: If the answer to Issue A is yes, whether disclosure of the severed portion of the record would constitute an unjustified invasion of personal privacy pursuant to section 21 of the Act.**

I have found under Issue A that the record contains personal information as defined in the Act. Once it has been determined that a record or part of a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information to any person other than the individual to whom it relates, except in certain circumstances. One such circumstance is outlined in subsection 21(1)(f) of the Act, which states:

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.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would

constitute an unjustified invasion of personal privacy. Section 21(3) identifies types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In particular, section 21(3) (b) 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;

The record at issue in this appeal was created by a police officer at the scene of an automobile collision. The affected person was charged with an offence under the Highway Traffic Act, thereby providing a clear indication that the record was "compiled and is identifiable as part of an investigation into a possible violation of law". In my view, the record satisfies the requirements of a presumed unjustified invasion of personal privacy under section 21(3) (b).

Because I have determined that a presumed unjustified invasion of personal privacy exists under section 21(3) (b), I must now consider whether any other provisions of the Act come into play to rebut this presumption. Section 21(4) outlines a number of circumstances which, if present, could operate to rebut a presumption under section 21(3). In my view, none of the circumstances outlined under section 21(4) apply in this case.

The provisions of section 21(2) may also be relevant. In Order 20, former Commissioner Sidney B. Linden stated that "... a combination of the circumstances set out in subsection 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view such a case would be extremely unusual." I agree with Commissioner Linden's view and adopt it for the purposes of this appeal.

Having carefully considered the provisions of section 21(2) and the content of the record, in my view, the circumstances required to rebut the presumption are not present in this appeal. Although the appellant has not made detailed submissions, it is clear from correspondence received from his lawyer during the course of the appeal that he is seeking access to the information contained in the record for the purpose of civil litigation. As such, it could be argued that section 21(2)(d) is a relevant consideration. On the other hand, the existence of a pending law suit could also make section 21(2)(e) relevant from the perspective of the affected person. These two sections read as follows:

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;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

In my view, the establishment of a presumed unjustified invasion under section 21(3)(b) in the circumstances of this appeal is clear, and the factors available under section 21(2) are not sufficiently compelling to outweigh this presumption. I find, therefore, that disclosure of the severed portion of the record under the Act would constitute an unjustified invasion of the personal privacy of the affected person.

**ORDER:**

I order the institution not to disclose the record.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

December 20, 1991  
\_\_\_\_\_  
Date