



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

ORDER P-626

Appeal P-9200802

Ministry of the Solicitor General and Correctional Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a joint request from two individuals under the Freedom of Information and Protection of Privacy Act (the Act) for information relating to certain employment related complaints made against one of the requesters, as well as any related documents which contained references to both requesters.

The Ministry granted partial access to the records. Access was denied to certain records or parts of records on the basis of sections 49(a) and 49(b) of the Act. The requesters appealed the denial of access.

During mediation, certain records were removed from the scope of this appeal. The Ministry also disclosed three additional pages of records to the appellants after obtaining the consent to do so from the individual to whom the information related.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry, the appellants, and the author of Record 1 (the affected person). Representations were received from the Ministry only.

During the inquiry, the Ministry disclosed Records 3 and 5 in their entirety to the appellants as well as a portion of Record 2, described below. In its representations, the Ministry clarified that the document described as Record 4 in the Notice of Inquiry had been previously disclosed to the appellants. The records which remain at issue in this appeal are:

Record 1: A complaint lodged against one of the appellants dated May 30, 1991 by the affected person. The pages of this record are numbered FI0048-58. Page FI0054, two lines on page FI0055, and the bottom of page FI0053 are not at issue.

Record 2: An investigation report dated September 24, 1991. This record is numbered FI0027-47. Part of page FI0042 and the top of page FI0043 are not at issue as well as those portions of the record which have previously been disclosed.

ISSUES:

The issues in this appeal are:

- A. Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies.
- C. If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(a) of the Act applies to Record 2.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.

"Personal information" is defined in section 2(1) of the Act, in part, as follows:

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

...

(e) the personal opinions or views of the individual except where 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,

...

Record 1 is a typewritten complaint submitted by the affected person to the Superintendent of an Ontario Provincial Police District Headquarters. The Ministry submits that this record contains the personal information of the affected person as well as the appellants as it is correspondence submitted in confidence. Having reviewed Record 1, I note that it contains descriptions of detailed incidents which relate primarily to the appellants. Certain descriptions of events also relate to individuals other than the appellants. In my view, this record contains the personal information of the appellants, the affected person and other identifiable individuals.

[IPC Order P-626/February 10, 1994]

Record 2 is an investigation report which contains information about the appellants as well as other individuals. In my view, this record contains the personal information of the appellants and other individuals.

ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies.

In Issue A, I found that both of the records contain the personal information of the appellants and other individuals.

Section 47(1) of the Act gives individuals a general right of access to personal information in the custody or under the control of institutions. However, this right of access is not absolute. Section 49(b) provides an exception to this general right of disclosure of personal information to the person to whom the information relates. Specifically, section 49(b) provides that:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 49(b) introduces a balancing principle. The Ministry must look at the information and weigh the requester's right of access to his/her own personal information against another individual's right to the protection of his/her personal privacy. If the Ministry determines that the disclosure of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the Ministry the discretion to deny the requester access to the personal information (Order 37).

It is my view that some of the information contained in Record 1 relates primarily to the appellants. In my view, disclosure of this information would not constitute an unjustified invasion of another individual's personal privacy, and section 49(b) does not apply.

The information remaining at issue is found in the parts of Records 1 and 2 which contain either the personal information of individuals other than the appellants, or the personal information of the appellants mixed with that of other individuals.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of

personal privacy. The Ministry relies upon the presumption contained section 21(3)(b) of the Act, which 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 Ministry submits that the personal information in the records at issue was prepared in the course of a law enforcement investigation under the Police Services Act.

Previous orders of this agency have determined that investigations of alleged violations of the Police Act (predecessor to the Police Services Act) qualify as investigations into a possible violation of law for the purposes of section 21(3)(b) (Orders P-285 and P-372). I agree, and am satisfied that the investigation of the complaint qualifies as an investigation into a possible violation of law.

Having carefully reviewed the records and the representations, I find that the personal information contained in the remaining parts of the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law and accordingly, its disclosure would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b) of the Act.

Section 21(4) of the Act lists the types of information the disclosure of which would not constitute an unjustified invasion of personal privacy. I have considered section 21(4) of the Act and find that none of the personal information at issue in this appeal falls within the ambit of this provision.

I am of the opinion that disclosure of the personal information in the remaining portion of Record 2, and parts of Record 1 would constitute an unjustified invasion of the personal privacy of individuals other than the appellants. Consequently, I find that the exemption under section 49(b) of the Act applies.

Section 49(b) is a discretionary exemption. The Ministry has provided representations regarding the exercise of its discretion to withhold the remaining personal information contained in the records. I find nothing improper in the Ministry's exercise of its discretion.

Because I have upheld the application of section 49(b) to all of the information severed from Record 2, it is not necessary for me to consider Issue C.

ORDER:

[IPC Order P-626/February 10, 1994]

1. I order the Ministry to disclose those portions of Record 1 which I have identified in the highlighted copy of the record provided to the Ministry with its copy of this order. The highlighted portion identifies the parts of Record 1 which should **not** be disclosed.
2. I order the Ministry to disclose the record referred to in Provision 1 within 35 days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
3. I uphold the Ministry's decision not to disclose the remaining portions of Record 2, and the highlighted portion of Record 1.
4. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellants pursuant to Provision 1, **only** upon request.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ February 10, 1994