



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

# ORDER P-915

Appeal P-9400677

Ministry of the Solicitor General and Correctional Services



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request for a copy of an investigation report and all other records relating to allegations against the requester. The investigation was conducted at a detention centre during the week of June 22, 1994. The requester is a former Corrections Officer and the records relate to allegations of an improper relationship between the requester and an inmate.

The Ministry identified responsive records and allowed partial access. The requester appealed the decision to deny access to the remaining records.

The records to which access was denied, in whole or in part, consist of minutes of a meeting, occurrence reports, notes to file and letters from inmate(s) as listed in Appendix A to this order. The Ministry relies upon the following exemptions to deny access to the records:

- security - section 14(1)(k)
- invasion of privacy - section 49(b)
- confidential correctional record - section 49(e)

A Notice of Inquiry was provided to the appellant, the Ministry, and two inmates identified in the records (the inmates). Representations were received from the Ministry only.

In its representations, the Ministry indicated that it would not address the applicability of sections 14(1)(k) and 49(e) of the Act to the records. Sections 14(1)(k) and 49(e) are discretionary exemptions and absent any representations on their applicability from the Ministry, I will not address them in this order.

Therefore, the sole issue to be determined in this order is whether disclosure of the records would be an unjustified invasion of privacy under section 49(b) of the Act.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where 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.

I find that all the records contain the personal information of the appellant and other identifiable individuals, including the inmates. I have highlighted in yellow the records or parts thereof that I have found contain personal information.

I find that the remaining portions of the records do not contain personal information of any individual other than the appellant. The other individuals referred to in the records were acting in their professional capacities and, therefore, the information cannot be characterized as their personal information. Accordingly, this information should be disclosed to the appellant.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access. Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals, the Ministry must weigh the requester's right to his/her own personal information against the privacy interests of other individuals. If the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the requester access to that information.

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 an individual's personal privacy.

Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

In its representations, the Ministry cites the following provisions which, if applicable, weigh in favour of privacy protection:

- disclosure of the information would expose certain individuals unfairly to harm - section 21(2)(e)
- the information is highly sensitive - section 21(2)(f)

I have carefully reviewed the representations of the Ministry together with the information in the records. I make the following findings:

- (1) I find that disclosure of information relating to the inmates (such as their names and other identifying information) would expose these individuals unfairly to harm and, therefore, section 21(2)(e) is a relevant consideration for this information where it appears in the records.
- (2) I find that disclosure of the information relating to inmates and other identifiable individuals, could reasonably be expected to cause excessive personal distress to these individuals (Order P-434). Accordingly, this information may be characterized as highly sensitive in nature and, therefore, section 21(2)(f) is a relevant consideration.
- (3) In summary, I find that sections 21(2)(e) and (f) of the Act are relevant considerations weighing in favour of privacy protection of the personal information of the inmates and other identifiable individuals. In addition, the appellant has not provided any representations raising any of the

considerations which weigh in favour of disclosure of the personal information in the records.

- (4) Accordingly, the exemption in section 49(b) of the Act applies to pages 69 to 78 in their entirety together with those portions of the records which I have highlighted in yellow, on the copy of the records provided to the Ministry's Freedom of Information and Privacy Co-ordinator with this order. The highlighted portions should not be disclosed.

**ORDER:**

1. I uphold the Ministry's decision to deny access to pages 69 to 78 in their entirety.
2. I uphold the Ministry's decision to deny access to the portions of the records which are highlighted on the copy of these records which is being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
3. I order the Ministry to disclose to the appellant the remaining portions of the records (that are **not** highlighted) on the copy of the records sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
4. I order the Ministry to disclose the records ordered to be disclosed in Provision 3 within thirty-five (35) days after the date of this order but not before the thirtieth (30th) day after the date of this order.
5. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 3.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ April 26, 1995

## APPENDIX "A"

### INDEX OF RECORDS AT ISSUE

PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED
2, 3	Minutes of meeting, Detention Centre, June 28, 1994, (part)	49(b)
6, 7, 8, 9	Note to file, June 26, 1994, by Deputy Superintendent, (part)	49(b), 14(1)(k)
10, 11, 12, 13, 14	Occurrence Report, June 25 1994 (part)	49(b)
15	Occurrence Report, June 25 1994 (whole)	49(b)
16, 17, 18, 19, 20, 21	Notes to File by Deputy Superintendent, June 25, 1994 (part)	49(b), 49(e)
22	Occurrence Report, June 25, 1994 (whole)	49(b), 49(e)
23	Note to file, June 25, 1994, (whole)	49(b)
24, 25	Letter to appellant from inmate	49(b)
26, 27	Occurrence Report, June 26 1994, (whole)	49(b), 49(e)
28, 29	Ministry memorandum, June 26, 1994, (whole)	49(b), 49(e)
30	Occurrence Report, June 26, 1994, (whole)	49(b), 49(e)
31	Occurrence Report, June 27, 1994, (part)	49(b)
41, 44, 46, 47, 48, 54, 56, 57, 64, 66, 68	Letters to appellant from inmate (part)	49(b)
69, 70, 71, 72, 73, 74, 75, 76, 77, 78	Letter from inmate (whole)	49(b)
79, 86, 88, 91, 94, 98, 99, 100	Letters to appellant from inmate (part)	49(b)
101, 102	Employee Discipline Report, June 28, 1994 (part)	49(b)