



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-928

Appeal P-9400738

Ministry of the Attorney General



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/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of the Attorney General (the Ministry) received a request for the address and phone number of a witness to a police shooting, and to a copy of a transcript of a tape recorded conversation between the witness and a police officer. The requester was shot by a police officer in 1989. The witness was a nine-year-old child at the time of the incident. The police officer was charged with the careless use of a firearm and was subsequently acquitted. The requester indicates that she has commenced civil action for personal injuries suffered as a result of the shooting and seeks the requested information in furtherance of these proceedings.

The Ministry granted partial access to the transcript and denied access to the address and telephone number of the witness, which is contained in the transcript and in other records. Access to the withheld portions of the records was denied pursuant to the following exemption:

- invasion of privacy - section 21(1)

In addition to this exemption, the Ministry's decision letter also indicates that it denied access to the address and phone number of the witness pursuant to a publication ban ordered during the trial which prohibited the publication of the identity of this witness.

The appellant appealed the Ministry's decision to deny access to the address and phone number of the witness. A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from the Ministry. The appellant indicated that she relies on previous correspondence with the Commissioner's office.

Because one of the records appears to contain the personal information of the appellant, the Commissioner's office also raised the possible application of section 49(b) (invasion of privacy).

The records at issue consist of the portion of a 20-page transcript which contains the address of the witness (Record 1) and the portion of two handwritten telephone lists pertaining to the witness (Records 2 and 3).

## **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 have reviewed the records at issue and I find that Record 1 contains the personal information of both the appellant and the witness. Records 2 and 3 contain the personal information of the witness and other

individuals, and do not contain the personal information of 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 and 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.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits the Ministry from releasing this information.

In both these situations, sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of 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.

If none of the presumptions contained in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Ministry submits that disclosure of the personal information at issue in this appeal would constitute a presumed unjustified invasion of privacy as it was compiled and is identifiable as part of an investigation into a possible violation of law (section 21(3)(b)).

The Ministry's representations also refer to a publication ban ordered by the presiding judge in the police officer's trial on the charge of careless use of a firearm. This ban, made pursuant to section 486(3) of the Criminal Code, relates to anything which might identify the witness.

The appellant submits that the address and telephone number of the witness is required by her counsel in order that he may interview and possibly call this individual as a witness in the civil action. The appellant has thereby raised the possible application of section 21(2)(d) as a factor which weighs in favour of disclosure of the personal information in the records.

The appellant also argues that the investigation of a possible violation of law concerned the activities of the police officer, not those of the witness and section 21(3)(b) should, therefore, not apply to this information.

I have reviewed the records and the representations, and I find as follows:

- (1) Previous orders of the Commissioner's office have held that section 21(3)(b) properly applies to information pertaining to individuals interviewed in the course of an investigation into a possible violation of law (Order P-223). This would include information regarding a witness. The records in this appeal were compiled, and are identifiable, as part of an investigation into a possible violation of the Criminal Code, and the presumed unjustified invasion of personal privacy under section 21(3)(b) applies.
- (2) None of this information falls within the scope of section 21(4). Nor has the appellant submitted that section 23 of the Act applies to this personal information.
- (3) Accordingly, the exemption in section 49(b) applies to Record 1 and the exemption in section 21(1) applies to Records 2 and 3.

Because of the findings I have made in this order, it is not necessary for me to decide whether the publication ban actually applies to preclude disclosure of this information in the circumstances of this appeal.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ May 16, 1995