



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

ORDER P-1010

Appeal P-9500193

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>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant, a police officer with the Ontario Provincial Police, asked the Ministry of the Solicitor General and Correctional Services (the Ministry) for a copy of a complaint filed against him by a particular member of the public (the complainant). The Ministry located responsive records and notified individuals whose interests could be affected by disclosure pursuant to section 28 of the Act. Three individuals (namely the complainant and two of her family members) objected to disclosure, and two other individuals consented. On this basis, partial access was granted to the responsive records. Access to the withheld portions was denied under the following exemptions in the Act:

- discretion to refuse requester's own information - section 49(a)
- invasion of privacy - sections 21(1) and 49(b).

The Ministry also withheld parts of several records on the basis that they are not responsive to the request.

The appellant filed an appeal from the Ministry's denial of access. A Notice of Inquiry was sent to the appellant and the Ministry. Neither submitted representations.

The records consist of correspondence, a witness list, three statements, several reports, extracts from police officers' notebooks, several memoranda and the public complaint form.

DISCUSSION:

RESPONSIVENESS OF RECORDS

The Ministry has denied access to parts of pages 34, 35, 36, 39 and 40 on the basis of non-responsiveness.

Pages 34 and 35 are part of a police officer's notebook, which records the daily activities of the officer. Some parts pertain to the appellant's request and others do not. Those which do not are not reasonably related to the request. I agree with the Ministry's assessment as to which parts are not responsive.

Pages 36, 39 and 40 are memoranda regarding complaints. The portions removed as non-responsive pertain to complaints other than the one mentioned in the request. In my view, the passages which were withheld as non-responsive are not reasonably related to the request. I agree with the Ministry's assessment as to which passages are non-responsive.

The non-responsive passages are not at issue and I will not consider them further in this order.

DISCRETION TO REFUSE REQUESTER'S OWN PERSONAL INFORMATION

In its decision letter, the Ministry referred to section 49(a), which permits an institution to deny access to records containing a requester's personal information in circumstances where one of the exemptions from

Part II of the Act, listed in section 49(a), would otherwise apply. In that regard, the Ministry stated that the exemption in section 21(1) would otherwise apply. However, section 21(1) is not one of the exemptions listed in section 49(a). Accordingly, the application of section 49(a) has not been established and I will not consider it further in this order.

However, section 21(1) may be applicable to some of the records at issue, and because it is a mandatory exemption, I will consider whether it applies in my discussion of “Invasion of Privacy”, below.

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 to determine whether they contain personal information and, if so, to whom the personal information relates.

I am satisfied that the following records contain personal information pertaining to the appellant: pages 12 (letter), 13 (witness list), 14-21 (three witness statements), 22-23 (duty report), 24 (report), 25-26 (another report) and 60 (complaint form). All of these records also contain information pertaining to the complainant and/or other members of her family (who did not consent to disclosure).

The remaining records at issue consist of police officers’ notebook entries (pages 29-35) and three memoranda (pages 36, 39 and 40). These records do not contain the appellant’s personal information. They do contain personal information which pertains to the complainant. The records comprising pages 29-35 also contain personal information pertaining to the complainant’s husband. Again, the complainant and her husband did not consent to disclosure.

The appellant submits that he does not require access to the personal information of others. The records at issue contain a great deal of personal information pertaining to other individuals. However, because the records contain the sort of information which the appellant seeks, I will not interpret this submission as a narrowing of the request. Alternatively, this submission could be seen as a suggestion that the personal identifiers of other individuals could be removed, so that the information would no longer qualify as the personal information of other individuals. However, in this case, where the identities of the complainant and her family are well known to the appellant, the information at issue would still be about “identifiable individuals” even if their personal identifiers were removed, and would therefore still qualify as “personal information”. Accordingly, I must consider whether disclosure of the records at issue would be an unjustified invasion of personal privacy.

Under section 49(b) of the Act, where a record contains the personal information of **both the appellant and other individuals**, and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the

institution has the discretion to deny the requester access to that information. I have found that the records comprising pages 12-26, inclusive, and page 60, all contain the appellant's personal information, as well as personal information pertaining to others. For these records, I will consider whether disclosure would be an unjustified invasion of the privacy of other individuals under section 49(b).

Where, however, a 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 an institution from releasing this information. I have found that the records comprising pages 29-36, and pages 39 and 40, do **not** contain the personal information of the appellant, but do contain personal information pertaining to others. I will consider whether disclosure of these pages would be an unjustified invasion of personal privacy under section 21(1).

Under both sections 21(1) and 49(b), 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.

Section 21(3)(b) provides that disclosure of personal information which "was compiled and is identifiable as part of an investigation into a possible violation of law ..." is presumed to constitute an unjustified invasion of personal privacy.

My review of the records indicates that some of them were created, and the remainder were collected, as part of an investigation into a possible violation of the Police Services Act and/or the Code of Conduct established by regulation under that statute.

The ordinary grammatical meaning of "compiled" is to gather or collect. Since all the records at issue were either created or collected for the purpose of this investigation, I find that they were compiled, and are identifiable, as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) have been satisfied.

The appellant has not argued that sections 21(4) or 23 apply in this case. Accordingly, I find that disclosure of any of the records at issue would be an unjustified invasion of the personal privacy of individuals other than the appellant. For this reason, the undisclosed information in the records comprising pages 12-26, inclusive, and page 60, is exempt under section 49(b), and the undisclosed information in the records comprising pages 29-36, and pages 39 and 40 is exempt under section 21(1).

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____

John Higgins
Inquiry Officer

_____ September 28, 1995