



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

ORDER P-1067

Appeal P-9500428

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the investigation of the conduct of a named bailiff. Pursuant to section 12 of the Bailiffs Act, the requesters asked for an investigation into the circumstances surrounding the seizure of their property by the named bailiff. The investigation was undertaken by the Court Services Manager of the region, an employee of the Ministry, in his capacity as an assignee of the powers and duties of a sheriff.

Pursuant to section 25 of the Act, the Ministry transferred that portion of the request dealing with the final investigation report to the Ministry of Consumer and Commercial Relations. The final investigation report was submitted by the Court Services Manager to the Registrar of Collection Agencies, a branch of the Ministry of Consumer and Commercial Relations.

The Ministry identified a nine page record consisting of handwritten notes taken by the Court Services Manager during the course of his investigation of the requesters' complaint as responsive to the request and denied access to it pursuant to the following exemptions contained in the Act:

- law enforcement - section 14(2)(a)
- invasion of privacy - section 21(1)

The requesters appealed the Ministry's decision to deny access to the handwritten notes. A Notice of Inquiry was provided to the appellants, the Ministry and to an individual whose rights may be affected by the disclosure of the record (the affected person). The Appeals Officer identified the possible application of sections 49(a) and (b) to the record at issue and the parties were invited to make submissions on these exemptions as well. Representations were received from the affected person and the Ministry. In its representations, the Ministry indicated that it was no longer relying on the exemptions provided by sections 14(2)(a) and 49(a).

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 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 record and I find that it contains personal information which relates to the appellants and to the affected person.

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 appellants and another individual 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 requesters access to that information.

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.

The Ministry submits that the disclosure of the record would constitute a presumed unjustified invasion of personal privacy as it contains personal information which was compiled and is identifiable as part of an investigation into a possible violation of law under section 21(3)(b). The Ministry indicates that the record contains personal information which was compiled by the Court Services Manager, acting in the capacity as a sheriff under section 12 of the Bailiffs Act. The Ministry argues that such an investigation could result in a finding that a violation of law, section 9 of the Bailiffs Act, had occurred and that penalties ranging from fines to the revocation of an appointment as a bailiff could result from a conviction.

I have carefully reviewed the record and the representations of the parties and make the following findings:

1. The personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law (the Bailiffs Act). Accordingly, the presumed unjustified invasion of personal privacy under section 21(3)(b) applies.
2. Section 21(4) does not apply and the appellants have not raised the possible application of section 23 of the Act.
3. I find, therefore, that the disclosure of the personal information contained in the record would constitute an unjustified invasion of personal privacy of the affected person and is properly exempt under section 49(b) of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Donald Hale

November 29, 1995

Inquiry Officer