



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

ORDER P-1154

Appeal P-9500665

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:

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 a letter and related documents containing allegations made by a named individual (the affected person) of wrongdoing by public officials in the City of Thorold (the City). The Ministry identified 37 pages of records as responsive to the request. The records consist of seven pages of e-mails, correspondence to and from the Ministry, along with the letter of complaint, to which was attached 29 pages of enclosures.

The Ministry denied access to the records claiming the application of the following exemptions contained in the Act:

- solicitor client privilege - section 19
- invasion of privacy - section 21

The requester, an employee of the City, appealed the Ministry's decision.

A Notice of Inquiry was provided to the Ministry, the appellant and the affected person. The Notice of Inquiry raised the possible application of sections 49(a) (discretion to refuse requester's own information) and 49(b) of the Act (invasion of privacy). Representations were received from all of the parties.

The Ministry indicated that it was no longer relying on section 19 of the Act and, therefore, this exemption and section 49(a) are no longer at issue in this appeal. The appellant stated that he was only seeking access to the "original complaints and documentation provided". He added that he was not seeking "any details of the investigation done by the Ontario Provincial Police or the Ministry of the Attorney General and is not seeking any documents prepared by either of those two authorities in giving legal advice or in contemplation of or for use in litigation". Consequently, the only record remaining at issue in this appeal is a one-page letter dated May 28, 1995 (page 2-1) and 29 pages of documents which were appended to it (pages 2-2 to 2-30).

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 correspondence to an institution sent by the individual which is implicitly or explicitly of a confidential nature.

It is my view that page 2-1 contains the personal information of the affected person only. No other names or personal identifiers appear on this page of the record. While pages 2-2 to 2-30 contain information about identifiable individuals, including the appellant, I find that they are all documents related to the normal business activities of the City. I further find that the information contained in pages 2-2 to 2-30 relates to these identifiable individuals only in their professional or employment capacities. Although the affected person submitted these

documents in support of the allegations made, I find that they do not contain his or her personal information. Accordingly, the information contained in pages 2-2 to 2-30 does not satisfy the definition of personal information.

As I have found that pages 2-2 to 2-30 do not contain personal information, and no other exemptions have been claimed to apply to them, these pages should be disclosed to the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it “... does not constitute an unjustified invasion of personal privacy”.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether 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 Ministry 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 argues that the personal information in the record was compiled as part of an investigation by the Police into a possible violation of law, the Criminal Code. The Ministry submits that since the presumption found in section 21(3)(b) of the Act applies, the disclosure of the record would constitute a presumed unjustified invasion of personal privacy.

The appellant submits that disclosure of the record is relevant to a fair determination of his rights (section 21(2)(d) of the Act).

Having carefully reviewed the record at issue, the representations and the circumstances of this appeal, I have made the following findings:

1. Page 2-1 was compiled as part of an investigation into a possible violation of law, the Criminal Code. Therefore, the disclosure of the personal information contained in this record would constitute a presumed unjustified invasion of the personal privacy of the affected person under section 21(3)(b) of the Act.
2. Factors favouring disclosure of the record under section 21(2) (such as section 21(2)(d)) are not sufficient to rebut the presumption in section 21(3)(b). I find that none of the personal information contained in the record falls under section 21(4). The appellant has not raised the possible application of section 23 of the Act.
3. Page 2-1 is, accordingly, exempt from disclosure under section 21(1) of the Act.

ORDER:

1. I order the Ministry to disclose pages 2-2 to 2-30 by sending the appellant a copy no later than **April 29, 1996** but not before **April 22, 1996**.
2. I uphold the Ministry's decision not to disclose page 2-1.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Office

_____ March 22, 1996