



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

ORDER P-1145

Appeal P-500675

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to the investigation of a named individual. The investigation related to allegations of fraud against the named individual (the affected person) in relation to his mother's estate. The deceased is the mother also of the requester. The Ministry granted partial access to the records. The requester appealed the Ministry's decision to deny access to the remaining records.

The Ministry denied access to the records on the basis that disclosure would constitute an unjustified invasion of the personal privacy of the individuals identified in the records (section 49(b)).

The records that remain at issue in this appeal consist of the handwritten notes of police officers and are listed below with the same numbering used on the index prepared by the Ministry and provided to the appellant:

- (1) Pages FI-0001 to FI-0010 handwritten notes October 28, 1991
- (2) Pages FI-0011 to FI-0018 handwritten notes October 22, 1991
- (3) Page FI-0019 October 29, 1991
- (4) Pages FI-0020 to FI-0026 handwritten notes October 30, 1991
- (5) Pages FI-0027 to FI-0034 handwritten notes January 25, 1992
- (6) Pages FI-0036 to FI-0044 handwritten notes, undated

A Notice of Inquiry was provided by the Commissioner's office to the appellant and the Ministry. Representations were received from both parties.

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 information relating to the marital or family status of 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 carefully reviewed the information in the records and I find that all the information in the records relates to the appellant, the affected person and other identifiable individuals. I find, therefore, that the records contain the personal information of these individuals.

I find also that the personal information of these individuals is intertwined to the extent that it is not possible to sever information under section 10(2) of the Act without disclosing the personal information of other individuals.

Section 47(1) gives individuals a general right of access to their own personal information held by a government body. Section 49 lists 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 decides 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 appellant 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.

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 the personal information in the records was compiled and is identifiable as part of a police investigation into allegations of fraud. The Ministry submits that the presumption in section 21(3)(b) applies to exempt the personal information from disclosure. The Ministry points out that while no criminal charges were laid, this does not negate the application of the presumption (Order P-613).

The appellant submits that disclosure of the personal information is necessary for her own investigation into the financial discrepancies of the estate.

I have carefully reviewed the records together with the representations of the parties and I make the following findings:

1. I find the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of the law (the Criminal Code) and falls within the presumption in section 21(3)(b) of the Act.
2. I find that none of the personal information in the records falls under section 21(4) and the appellant has not raised the possible application of section 23 of the Act.
3. I find that disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy and section 49(b) of the Act applies.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____

Mumtaz Jiwan

Inquiry Officer

_____ March 13, 1996