



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

ORDER P-1180

Appeal P-9500692

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

NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request for access to a copy of the inspection report on the operations of a named police service (the Police Service). The report was prepared by the Policing Services Division of the Ministry. The request was made under the Freedom of Information and Protection of Privacy Act (the Act).

The Ministry provided partial access to the report, withholding certain portions on the basis of the following exemption in the Act:

- security - section 14(1)(i)
- facilitate the commission of an unlawful act - section 14(1)(l)
- invasion of privacy - section 21(1)

The requester (now the appellant) appealed the Ministry's decision.

This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from the appellant only. The Ministry advised this office that it would not be forwarding any submissions in response to the Notice of Inquiry.

In the absence of any representations from the Ministry, because sections 14(1)(i) and (l) are discretionary exemptions, those passages for which the Ministry has claimed the application of these exemptions should be disclosed to the appellant. These are the first and third paragraphs on page 26 of the record.

As part of her representations, the appellant has included copies of pages 19, 20, 21 and 38. These pages contain severances made by the Police Service in response to requests made to them under the Municipal Freedom of Information and Protection of Privacy Act (the municipal Act). On page 20, the second paragraph (consisting of one sentence) has been disclosed. On page 21, the first two sentences on the page have been disclosed.

The Ministry had initially declined to release these three sentences. I advised the Ministry that the Police Service had disclosed this information pursuant to the municipal Act and that the appellant had obtained copies of this. In these circumstances the Ministry indicated that this information should also be released to the appellant in response to her request made to it under the Act. The Ministry's position is that given the prior disclosure under the municipal Act, disclosure at this time cannot constitute an unjustified invasion of privacy. In these circumstances, I agree that this information should also be released to the appellant and I will order the Ministry to do so.

The information at issue thus consists of the balance of those portions of pages 20 and 21 which have been withheld and the severances on pages 19 and 38. I will consider whether the mandatory exemption in section 21(1) of the Act applies to this information.

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.

The appellant submits that the record does not contain any personal information because no names are mentioned. Therefore, she maintains that the information in the record is not about an "identifiable individual".

In the "Community Profile" section of the record, a description is provided of the staff complement of the Police Service. This description indicates that the Police Service had 15 employees - a chief, two sergeants, 10 constables and two civilians. It further notes that nearly all the staff are original residents of the town or come from the surrounding area.

While it is true that the record contains no names, it does refer to individuals by their position title within the Police Service. In Order P-230, Commissioner Tom Wright made the following comments about the concept of an "identifiable individual" and personal information:

I believe that provisions of the Act relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

I accept this approach and will apply it in the present case.

In my view, given the small number of employees of the Police Service, the fact that the record contains a breakdown of the positions held by these employees and the manner in which the record refers to these individuals, there is a reasonable expectation that the individuals can be identified from the information contained in the record.

Further, I find that this information constitutes the "personal" information of these individuals. Information about an employee does not constitute personal information where the information relates to the individual's employment responsibilities or position. Where, however, the information involves an examination of the employee's performance or an investigation into his or her conduct, these references are considered to be the individual's personal information.

It is true that the objective of the inspection report was to review the human resources management and personnel administration policies, practices and procedures of the Police Service and was not to be directed at the activities of any particular individuals. However, I am of the view that the comments contained in the report in the particular passages at issue relate to particular employees who, as I have indicated, are identifiable within the context of the report. I find that these passages constitute the personal information of these individuals.

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 this 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 result in an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 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 circumstances that are relevant in the circumstances of the case.

In its decision, the Ministry claimed that the passages at issue related to the employment or education history of the individuals and thus fell within the presumption in section 21(3)(d) of the Act which reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

relates to employment or educational history;

All of the information at issue concerns employment related incidents involving the members of the Police Service. However, in my view, it cannot accurately be characterized as the employment history of any of these individuals. Rather, it is more in the nature of a description of how the various personal and professional relationships among these individuals impact on the operations of the Police Service. Accordingly, I find that section 21(3)(d) does not apply to this information.

I will now examine whether any of the considerations outlined in section 21(2) of the Act or any of the circumstances of this case apply to the personal information.

In my view, the personal information at issue is highly sensitive in that it deals with some of the delicate relationship issues involving members of the Police Service. Thus, I find that section 21(2)(f) is a relevant consideration.

The appellant submits that the report should be disclosed in its entirety to "further scrutinize the Ministry". I interpret this comment as raising the possible application of section 21(2)(a) of the Act which states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

In my view, disclosing personal information about members of the Police Service would not result in the public scrutiny of the Policing Services Division of the Ministry. This personal information would not offer members of the public any insight as to the manner in which the Ministry conducted its inspection of this particular Police Service. Therefore, I find that section 21(2)(a) is not a relevant consideration in the circumstances of this appeal.

Having considered all the circumstances of this case and the fact that the personal information is highly sensitive, I find that its disclosure would constitute an unjustified invasion of the personal privacy of the identifiable Police Service members under section 21(1) of the Act.

ORDER:

1. I uphold the decision of the Ministry not to disclose the information withheld from pages 19 and 38, the third paragraph on page 20 and the information withheld from the third paragraph on page 21.
2. I order the Ministry to disclose to the appellant the second paragraph on page 20, the first two sentences on page 21 and page 26 in its entirety by sending her a copy by **May 28, 1996**.
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 records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

Anita Fineberg

Inquiry Officer

_____ May 17, 1996