



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

ORDER P-1214

Appeal P-9500623

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

Web site: <http://www.ipc.on.ca>

416-326-3333

1-800-387-0073

Fax/Téloc: 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 under the Freedom of Information and Protection of Privacy Act (the Act) for access to the file relating to certain charges laid against the requester which are maintained by a detachment of the Ontario Provincial Police (the OPP). The requester also sought access to all other records relating to his arrest and the disposition of the charges brought against him. The Ministry located records responsive to a portion of the request and denied access to them, in part, pursuant to the following exemptions contained in the Act:

- facilitate commission of a crime - section 14(1)(l)
- law enforcement - section 14(2)(a)
- discretion to refuse requester's own information - section 49(a)
- invasion of privacy - section 49(b)

The requester (now the appellant) appealed the Ministry's decision on the basis that further records responsive to his request should exist. Specifically, the appellant requested access to the Crown brief, the Police investigation file, the occurrence report, interview notes, his own statement given to the police, as well as any other records relating to him which are held by the OPP.

The Ministry responded by conducting another search which located additional records. It also prepared another decision letter in which it disclosed further records to the appellant. The Ministry's decision letter claimed the application of the solicitor-client exemption (section 19) to some of the additional records which it located. Further mediation of the appeal was not possible and a Notice of Inquiry was provided to the Ministry, the appellant and another individual whose interests may be affected by the disclosure of the information contained in the records (the affected person). Representations were received from all of the parties.

The records at issue in this appeal consist of the undisclosed portions of five pages of interview notes recorded in a Police officer's notebook (Pages 1-4 and 19), parts of a Canadian Police Information Central Data Bank (CPIC) criminal record printout (Page 5), eight pages of interview notes in their entirety (Pages 6-13) and the undisclosed portions of ten pages from the Crown brief (which have been designated as Pages 2, 4, 4A, 4B, 5, 6, 7, 9, 9A and 17).

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the information contained in the records and find that Pages 2, 3, and 6-13 of the Police records and Pages 2, 4, 4A, 4B, 5, 6, 7, 9, 9A and 17 of the Crown brief contain the personal information of the appellant and two other identifiable individuals (the affected persons). Pages 1, 4, 5 and 19 of the Police records contain only the personal information of the appellant.

The undisclosed portions of Pages 1, 4 and 19 of the Police records relate to investigations and other activities undertaken by the officer who took the notes and do not pertain to the appellant.

I find that these portions of the records are outside the scope of the request and are not, therefore, responsive. I will not, therefore, consider these records further in this order. Finally, I find that the undisclosed portion of Page 5 of the Police records does not contain any personal information.

INVASION OF PRIVACY

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 personal information of both the appellant and other individuals, 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 appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to his or her own personal information, the only situation under section 49(b) in which he or she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the 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 Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant to the appeal.

The Ministry submits that the presumption in section 21(3)(b) applies to the information contained in Pages 2, 3 and 6-13 of the Police records as it was compiled and is identifiable as part of an OPP investigation into a possible violation of the Criminal Code by the appellant and that the disclosure of this information would result in a presumed unjustified invasion of the personal privacy of one of the affected persons .

The appellant has not made any specific representations pertaining to the application of this or any other presumption. I find that the presumption provided by section 21(3)(b) applies to all of the undisclosed information contained in Pages 2, 3 and 6-13 of the Police records. This information represents a compilation of information gathered by the investigating officer into allegations of criminal conduct made against the appellant. I further find that sections 21(4) and 23 have no application in the present circumstances. Accordingly, the undisclosed portions of Pages 2, 3 and 6-13 of the Police records are exempt under section 49(b).

I have found above that Pages 2, 4, 4A, 4B, 5, 6, 7, 9, 9A and 17 of the Crown brief contain the personal information of both the appellant and several of the affected persons. Page 2 contains a summary of a meeting between the Crown Attorney and one of the affected persons. Pages 4 and 4B of the Crown brief contain information which describes the injuries suffered by one of the affected persons as well as a recitation of facts as related by this individual. Pages 4A, 5, 9 and 9A contain the address and telephone numbers of this individual. Pages 7 and 17 relate to arrangements made for a meeting between the Crown Attorney and one of the affected persons. Page 6 contains the name of the other affected person who was represented by the appellant's counsel in a criminal proceeding which is unrelated to that involving the appellant.

The Ministry submits that the information contained in these records is highly sensitive within the meaning of section 21(2)(f). This is a consideration which favours the protection of the privacy of the affected persons.

The charge against the appellant involved an allegation of domestic assault. In the circumstances of this appeal, I find the undisclosed information contained in the Crown brief to be highly sensitive within the meaning of section 21(2)(f). Balancing the privacy rights of the affected persons against the appellant's right of access to information which relates to him, I find that the disclosure of the severed information contained in Pages 2, 4, 4A, 4B, 6, 7, 9, 9A and 17 of the Crown brief would result in an unjustified invasion of the personal privacy of the affected persons. The undisclosed portions of these records are, therefore, exempt from disclosure under section 49(b).

FACILITATE COMMISSION OF AN UNLAWFUL ACT/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

The Ministry claims the application of section 14(1)(l) of the Act to the undisclosed information contained in Page 5 of the Police records. This information consists of transmission access codes for the CPIC system which allow the OPP to gain access to certain criminal records information. This section states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime.

The Ministry submits that the release of this type of information could compromise the security of the CPIC computer system and would make unauthorized and illegal access to the CPIC system easier, contrary to various provisions of the Criminal Code relating to the unauthorized use of data contained in computer records. It adds that both CPIC Policy and OPP Police Orders prescribe that CPIC transmission access codes should be deleted from any hard copies which are made of CPIC printouts.

I am satisfied, based on the representations provided to me by the Ministry, that the disclosure of the transmission access codes for the CPIC system which have been severed from Page 5 of the Police records could reasonably be expected to facilitate the commission of an unlawful act, the

unauthorized use of the information contained in the CPIC system. For this reason, I find that the undisclosed portion of Page 5 of the Police records qualifies for exemption under section 14(1)(l) and is, therefore, exempt from disclosure under section 49(a).

REASONABLENESS OF SEARCH

The appellant maintains that additional records responsive to his request should exist. Specifically, he seeks access to a transcript of a telephone conversation between himself and the investigating officer on the night of his arrest, any witness statements obtained by the investigating officer and any medical reports which pertain to injuries sustained by one of the affected persons as a result of the occurrence which gave rise to the assault charge or any other medical information pertaining to other allegations made against him. The appellant also maintains that his file should include records pertaining to a named police officer who is an associate of one of the affected persons.

The Ministry has provided an affidavit from the investigating officer in which she describes in detail the nature and extent of the search which she undertook to locate records responsive to the request, including those specified above. The investigating officer examined both the Crown brief and the investigation file and deposes that no additional records beyond those already identified exist.

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that such a record does not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

I have considered the representations of the parties and I find that the Ministry's search for records responsive to each aspect of the appellant's request was reasonable in the circumstances.

Because of the manner in which I have disposed of the records above, it is not necessary for me to address the application of sections 14(2)(a) and 19 to the records.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ June 20, 1996