



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

ORDER P-1222

Appeal P-9500655

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for access to records concerning the execution of a search warrant at his property. The appellant was seeking access to all reports submitted by several named Ontario Provincial Police (OPP) officers in regard to his complaint that his property was unnecessarily damaged during the search.

The Ministry located a number of responsive records on file at the Public Complaints section of the OPP's Professional Standards Bureau. The Ministry referred the appellant to his local police service for access to some responsive records and denied access to other responsive records in full. The appellant appealed the Ministry's decision to deny access to the records.

During mediation of the appeal, the Office of the Police Complaints Commissioner completed its review of the appellant's complaint and, as a result, the Ministry provided the appellant with partial access to the information he requested. Access to the remaining parts of the record was denied under the following exemption:

- invasion of privacy - section 49(b)

The appellant continued his appeal with respect to the Ministry's denial of access to parts of the record. A Notice of Inquiry was sent to the Ministry, the appellant, and four police officers named in the records. Representations were received from the Ministry, the appellant, and two of the police officers.

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.

The Ministry submits that the exempted parts of the responsive records consist of recorded information about the appellant and the police officers who were the subject of the appellant's complaint under the Police Services Act regarding their conduct during the execution of the search warrant at his property.

In my view, the fact that a complaint has been lodged under the Police Services Act against an identifiable police officer is recorded information about that individual. Additionally, the fact that an identifiable individual has lodged such a complaint is the personal information of the complainant (in this case the appellant). Accordingly, I agree with the Ministry that the records contain the personal information of the appellant and the three police officers he complained about.

The fourth police officer is the officer who received the complaint. Although he submitted representations objecting to the disclosure of the records, this officer was not the subject of the

appellant's complaint and, as all information contained in the records relates to him in his professional capacity, I find that the records do not contain his personal information. 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 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 requester access to that information. In this situation, the requester is not required to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 49(b) in which he/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 privacy.

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 records at issue were compiled and are identifiable as part of an investigation into a possible violation of the Police Services Act. As such, the Ministry submits that disclosure of the personal information of the three police officers who were the subjects of the appellant's complaint would constitute a presumed unjustified invasion of their personal privacy under section 21(3)(b) of the Act.

The information contained in the records relates only to the appellant's complaint. The records do not contain information provided by any of the subject officers.

In Order M-444, considering the application of the exemption in section 38(b) of the Municipal Freedom of Information and Protection of Privacy Act, Inquiry Officer John Higgins found that applying a presumed unjustified invasion of personal privacy to prevent disclosure of information which the requester had provided to a government body would be, in the circumstances of that case, a manifestly absurd result. He found that the purpose of section 38(b) (which is the equivalent to section 49(b) in the provincial Act) is to enable an individual to obtain access to records containing that person's own personal information. As a result, Inquiry Officer Higgins ordered the disclosure of that information. In my view, the circumstances here are essentially the same as those in Order M-444, and I find that the presumption in section 21(3)(b) does not apply to the information contained in these records.

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 which are relevant in the circumstances of the case.

The Ministry has not made representations respecting the application of any of the factors listed in section 21(2). The one police officer who objected to disclosure of his personal information states simply "... any information ... is strictly of a police jurisdictional interest ...".

Having considered all of the circumstances of this appeal and balanced the police officers' right to the protection of their privacy against the appellant's right to access his personal information, I am not satisfied that disclosure of the records would result in an unjustified invasion of personal privacy. Accordingly, the exemption in section 49(b) does not apply, and the records should be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose the records to the appellant by sending him a copy by **August 14, 1996** but not before **August 9, 1996**.
2. 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 1.

Original signed by: _____ July 9, 1996
Holly Big Canoe
Inquiry Officer