



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

ORDER P-1319

Appeal P-9600331

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The requester's husband was killed in a highway traffic accident when a log fell from a truck and struck his car. The requester submitted a request to the Ministry of the Attorney General (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for access to the Crown brief relating to the police investigation of the accident.

The Ministry provided the appellant with access to some of the documents in the Crown brief, including all but one of the witness statements taken by the police, severing only the witnesses' home addresses and telephone numbers. The Ministry cited section 21(1) (invasion of privacy) to withhold the home addresses and telephone numbers and several other documents, including the statement taken from the driver of the truck which the police suspected may have been carrying the log which struck the appellant's husband's car.

The requester (now the appellant) appealed the Ministry's decision and confirmed that she wished to obtain only the statement given to the police by the driver of the truck, as well as the witnesses' home addresses and telephone numbers.

A Notice of Inquiry was provided by this office to the appellant, the Ministry and 17 individuals whose rights might be affected by the disclosure of the records (the affected persons). Representations were received from the Ministry, the appellant and two of the affected persons. In addition, nine of the affected persons consented to the release of their home addresses and telephone numbers to the appellant.

The information which remains at issue in this appeal consists of portions of Records 39, 40, 155, 160, 182, 188, 192, 194, 215, 221, 233, 237, 245, 306 and 310 and Records 66-77 in their entirety

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. I have reviewed the information contained in the records and find that they contain only the personal information of the affected persons.

Section 21(1) of the Act prohibits the Ministry from disclosing personal information except in the circumstances listed in sections 21(1)(a) through (f). Of these, only section 21(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy".

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it.

The Ministry submits that the disclosure of the information requested would constitute a presumed unjustified invasion of the affected persons' personal privacy, as the information was compiled as part of a law enforcement investigation into a violation of law [section 21(3)(b)], namely, whether the driver had failed to properly secure his load or remain at the scene of the accident, contrary to the provisions of the Highway Traffic Act or the Criminal Code, respectively.

The appellant contends that since the names and statements of the witnesses have already been disclosed to her in response to her request, the release of their addresses and telephone numbers would not be an invasion of their privacy. She adds that their addresses and telephone numbers are likely available through other public sources.

The appellant also asserts that she requires the driver's statement in order to assess whether she should pursue civil proceedings against him [section 21(2)(d) - fair determination of rights]. In addition, the appellant argues that the disclosure of this statement may promote health and safety [section 21(2)(b)], since drivers should know that if their negligence causes injury or death, they cannot leave an accident scene and then later claim the privacy protections of the Act. According to the appellant, it is in the public interest that further investigation by way of a court proceeding and a court determination be made respecting the circumstances surrounding the accident.

One of the affected persons objects to the release of his home address and telephone number because his recollection of the accident is not clear due to the passage of time. This individual concludes that he does not wish to be involved in this matter at this time.

Counsel for the truck driver submits that his client wishes to offer the family his sincere condolences on their loss, but indicates that charges were ultimately not brought against his client and that his client's truck was found to be in compliance with all safety standards. He asserts that the disclosure of the driver's statement could create serious negative publicity for his client [section 21(2)(i)] and have a detrimental impact on his client's business [section 21(2)(e)]. I have reviewed the information contained in the records, together with the representations of the Ministry, the appellant and the affected persons. I am satisfied that the personal information was "compiled and is identifiable as part of an investigation to a possible violation of law", a police investigation into a possible breach of the Highway Traffic Act and/or the Criminal Code. I find that the requirements of section 21(3)(b) are met and the presumption in section 21(3)(b) applies.

As noted above, the only way such a presumption can be rebutted is if sections 21(4) or 23 apply. Even if I were to find that section 21(2)(b) or (d) were relevant in the circumstances of this appeal, the Divisional Court's decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that the factors and considerations in section 21(2) cannot be used to rebut the presumptions in section 21(3). None of the information in the records falls within section 21(4). However, since the appellant has raised section 23, I will consider whether section 23 applies to the records.

PUBLIC INTEREST IN DISCLOSURE

The appellant argues that there is a public interest in the disclosure of the record at issue in accordance with section 23 of the Act. This section provides:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (Emphasis added)

There are two requirements contained in section 21 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure and this compelling public interest must **clearly outweigh the purpose** of the exemption.

The appellant contends that there is a compelling public interest in the disclosure of the requested information, in that, negligent drivers will be identified and not allowed to hide behind the privacy protections of the Act. In addition, the appellant suggests that disclosure of the information will encourage drivers not to leave the scene of an accident. Finally, the appellant argues that the public would want to ensure that she has the full opportunity to review and investigate the information respecting the accident and that the loss of a husband and father in these circumstances clearly outweigh the purpose of the exemption.

I am not persuaded that there is a compelling public interest in either the disclosure of the home addresses and telephone numbers of the witnesses or the statement of the suspect driver. The appellant is aware of the names of all the witnesses and has been provided with their business addresses and telephone numbers. In my view, this disclosure is sufficient to allow the appellant to contact these individuals should she so desire.

With respect to the driver's statement, the interest advanced by the appellant is a private rather than a public one; in my view, she requires the statement in order to determine whether to pursue civil proceedings against the driver. I am also not swayed by the appellant's argument that disclosure of this statement would serve the public interest by deterring individuals from leaving the scene of an accident. I note that there are already sanctions in place under the Criminal Code for failure to remain at the scene of an accident.

Accordingly, I find that section 23 does not apply since there is no compelling public interest in the disclosure of the information which clearly outweighs the purpose of the mandatory personal privacy exemption.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Donald Hale
Inquiry Officer

December 18, 1996