



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

# ORDER P-1335

Appeal P\_9600369

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 a copy of all records sent by the Ministry to the Police Complaints Commissioner's office in relation to a specific complaint file.

The Ministry granted access in full to 36 pages, partial access to three pages and denied access in full to the remaining three pages (pages 11, 12 and 29) of the records. For those parts of the records to which access was denied in whole or part, the Ministry claimed the following exemptions:

- law enforcement - section 14(2)(a)
- invasion of privacy - sections 21 and 49(b)
- discretion to refuse requester's own personal information - section 49(a)

The appellant appealed the Ministry's decision to deny access to pages 11, 12 and 29 and claimed that there was a compelling public interest in the disclosure of these records pursuant to section 23 of the Act. The appellant also claimed that further responsive records should exist; specifically a copy of the "interim report" signed by the investigating officer and a copy of the "final report" as required by section 87(10) of the Police Services Act.

During mediation, the Ministry granted access in full to page 29 of the records; a memorandum dated November 30, 1995. Therefore, the record remaining at issue in this appeal consists of a two-page "Duty Report" dated December 14, 1995 (pages 11 and 12).

A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

## **PRELIMINARY MATTERS:**

### **SCOPE OF THE REQUEST**

In his letter of appeal and during the course of mediation, the appellant indicated that the scope of the appeal was limited to pages 11, 12 and 29 of the record (those pages to which access had been denied in full). The appellant's representations appear to indicate that he is now seeking access to all of the records originally requested.

In Order P-931, Assistant Commissioner Irwin Glasberg addressed a similar issue and stated:

Previous orders have held that the Commissioner's office has the power to control the manner in which the appeals process is undertaken. As part of this general authority, this tribunal's policy is that, once an appellant has narrowed the ambit of an appeal, he or she cannot reintroduce the excluded information at a later date.

This approach has been adopted for a number of reasons. First, absent such a policy, there would be no certainty as to the scope of an appeal. Second, unless the exact nature of the records at issue is known at an early stage in the proceedings, it will not be possible to successfully mediate the appeal under section 51 of the Act. Finally, the issue identification and notification functions performed by the Commissioner's office could not be conducted effectively unless the records in question are accurately identified.

I have carefully reflected on the appellant's application. While I appreciate his reasons for wishing to address all of his access-related issues in the context of the present appeals, I believe that it would be unfair to expand the scope of these proceedings at this late stage in the process. In making this determination, I am also mindful of the fact that the appellant would be entitled to make a further access request to the Ministry for the specific information that he is seeking...

The result, therefore, is that I will not consider Part A of the two requests in the context of the present appeals.

I agree with Assistant Commissioner Glasberg's approach and reasoning and adopt them for the purposes of this appeal. For the reasons articulated above, I am not prepared to expand the scope of the request to its original extent. In this order, I will only consider the issues as they apply to pages 11 and 12 of the record (as stated above, page 29 was disclosed during mediation), as well as the issue of whether further responsive records exist.

### **WAS THERE A PROPER DECISION LETTER?**

In his letter of appeal and his representations, the appellant claims that the Ministry failed to describe the record at issue.

Section 29(1)(b) of the Act sets out the information which is to be included in a notice of refusal to give access where responsive records exist, and states as follows:

Notice of refusal to give access to a record or a part thereof under section 26 shall set out,

where there is such a record,

- (i) the specific provision of this Act under which access is refused,
- (ii) the reason the provision applies to the record,
- (iii) the name and position of the person responsible for making the decision, and
- (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

In my view, the Ministry's decision letter satisfies the requirements set out by section 29(1)(b). Additionally, a detailed description of the record was included in the Notice of Inquiry.

## **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.

Pages 11 and 12 were the subject of a previous order of this office (P-1250). In that order Inquiry Officer Laurel Cropley found that these pages contained the personal information of the appellant and another identifiable individual. She also found that the record qualified for the presumption found under section 21(3)(b) of the Act and, therefore, was exempt under section 49(b) of the Act. Inquiry Officer Cropley went on to find that the public interest override under section 23 of the Act did not apply. The appellant was informed of this fact but insisted on proceeding with this appeal.

I agree with Inquiry Officer Cropley's findings and adopt them for the purposes of this appeal. Having reviewed the appellant's representations, I find nothing in them which would lead me to a different conclusion in this appeal. Accordingly, I find that pages 11 and 12 are exempt under section 49(b) of the Act.

Because of the way in which I have disposed of this issue it is not necessary for me to consider the possible application of sections 14(2)(a) and 49(a) of the Act.

### **REASONABLENESS OF SEARCH**

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.

The appellant claims that an Interim Report, in addition to the one disclosed to him (pages 30 and 31 of the record), exists because the copy which was disclosed was not signed by the investigating officer. In addition, he claims that in accordance with section 87(6) of the Police Services Act he is entitled to a Final Report, which the Ministry claims does not exist.

The Ministry submits that all records responsive to the request have been located and those to which the appellant is entitled have been provided to him. The Ministry has also described the steps taken by Ministry staff to locate all responsive records.

With respect to the "Interim Report", the Ministry explains that the report was signed by the investigating officer's immediate superior, the officer in charge of the Professionals Standards Branch, who has full authority to do so on behalf of the investigating officer. Accordingly there is no "Interim Report" signed by the investigating officer. There is no "Final Report", as a decision was made under the authority of section 85(1) of the Police Services Act not to proceed with the investigation. The Ministry submits that the appellant was informed of this and that no further action would be taken. Consequently a final report was not submitted pursuant to section 87 of the Police Services Act.

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

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ January 22, 1997