



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

# ORDER P-1424

Appeal P\_9700097

Ministry of the Attorney General



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## **NATURE OF THE APPEAL:**

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the documents which were disclosed to the appellant during his criminal trial in October, 1996. The Ministry located 52 pages of records responsive to the request and denied access to them in part, based on the exemptions in section 19 (solicitor-client privilege) and 21(1) (invasion of privacy) of the Act. The Ministry also advised the appellant that a copy of the court transcript for his trial was publicly available. The appellant appealed the Ministry's decision.

During mediation of this appeal, the appellant agreed that information in the records that was non-responsive to his request would not be at issue in the appeal. This information is found in portions of police officer notebooks. He also advised that he would be obtaining a copy of the court transcript and it is not at issue.

This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties. As some of the records appeared to contain the personal information of the appellant as well as other individuals, representations were also requested on sections 49(a) (discretion to refuse requester's own information) and 49(b) (invasion of privacy) of the Act.

Subsequent to the submission of its representations, the Ministry advised that it had released 5 pages of records (pages 3, 17, 18, 19 and 20) to the requester in whole, and 3 pages (pages 21, 23 and 24) in part. This disclosed information is not at issue in this appeal.

The records at issue comprise 47 pages, 43 which were denied in whole and 4 which were denied in part. The records consist of police officer notebooks, interview reports/witness statements and other documentation related to the court case.

## **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 records and the submissions of the parties and find that all the pages of the records, except for the severed portions of pages 21 and 23, contain the personal information of the appellant and other identifiable individuals. Pages 21 and 23 only contain the personal information of an individual other than the appellant.

### **INVASION OF PRIVACY**

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution and the appellant, therefore, has a general right of access to those records which contain his personal information.

Section 49 sets out exceptions to this right. Where a record contains the personal information of both the appellant and another individual, section 49(b) of the Act gives the Ministry the discretion to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. As noted previously I have found that all the pages of the record, except Pages 21 and 23, contain the personal information of both the appellant and other individuals.

Where, however, the record contains only the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits an institution from releasing this information. In this appeal I have determined that pages 21 and 23 contain only the personal information of an individual other than the appellant. I will therefore make my finding on these pages under section 21(1) of the Act.

In both these situations, sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. 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 section 21(3)(b) of the Act applies to all the records at issue. Section 21(3)(b) states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The Ministry states that the records were all part of the Crown brief with respect to the criminal prosecution against the appellant and contain information provided to the police during their investigation into this criminal matter. It submits that statements made by individuals about their actions regarding, possible involvement in, and/or the extent of their knowledge of matters under criminal investigation by the police clearly constitute personal information, the disclosure of which would constitute an unjustified invasion of personal privacy.

The Ministry states that if a witness is required to testify in open court regarding personal information, then to the extent the personal information contained in the Crown brief has been made public, the witness's privacy interest in such personal information is diminished. However, the testimony of a witness does not always reflect all of the personal information in the various written and oral statements he or she may have made to the police.

The appellant submits that he has seen all the records at issue and reviewed them in his lawyer's office. However, when he requested copies of the records from his lawyer, his lawyer refused to give him access to them and told him to make a request to the Ministry for the documents. The appellant states that under The Solicitors Act, R.S.O. 1990, his lawyer is required to deliver to him all documents belonging to him. The appellant does not specifically refer to section 21 or the application of any of the factors enumerated in section 21(2) supporting disclosure, however, his representations appear to refer to section 21(2)(d) (fair determination of rights). The appellant submits that he needs the documents to pursue alternate courses of action in regards to matters related to his trial. The appellant states that if he had represented himself in court, which he intends to do the next time, he would have these documents.

I find that the personal information on all the pages of the record were compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the personal information in these pages is subject to the presumption in section 21(3)(b) of the Act. Although I am sympathetic to the appellant's position, as I have previously indicated, a factor or combination of factors under section 21(2) cannot rebut a presumption under section 21(3).

I have considered the application of section 21(4) of the Act and find that none of the personal information at issue falls within the ambit of this provision and the appellant has not claimed that section 23 applies in this case. Thus, I find that disclosure of all the pages of the record **would** constitute an unjustified invasion of the personal privacy of other identifiable individuals and, therefore, the undisclosed portions of pages 21 and 23 are exempt under section 21(1) of the Act and the remaining pages are exempt under section 49(b) of the Act.

Because of the way I have resolved the issues in this appeal, it is not necessary for me to consider the application of sections 19 and 49(a).

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ July 16, 1997