



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1427

Appeal P_9700043

Criminal Injuries Compensation Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND AND NATURE OF THE APPEAL:

The appellant filed a claim for compensation with the Criminal Injuries Compensation Board (the Board) in 1991. In his application, the appellant alleged that he had been assaulted by two police officers. In 1996, the Board awarded compensation to the appellant.

The appellant submitted a request to the Board under the Freedom of Information and Protection of Privacy Act (the Act) for access to the file pertaining to his claim for compensation. The Board granted partial access to the responsive records. Access was denied to the remaining 41 pages on the basis of sections 21(1) and 49(b) of the Act (invasion of privacy). The requester appealed the denial of access.

This office provided a Notice of Inquiry to the appellant, the Board and three police officers referred to in the records (the affected persons). Representations were received from the Board only.

In its representations, the Board states that it is no longer relying on sections 21(1) and 49(b) and intends to disclose pages 78 to 91 of the record, being the Statement of Claim filed by the appellant, the Statement of Defence filed on behalf of two of the affected persons and an Order of the Ontario Court removing the appellant's solicitor as the solicitor of record. No discretionary exemptions have been claimed by the Board for these records. The records have not yet been disclosed by the Board to the appellant and I will therefore order them to be disclosed in the order provisions below.

I note that pages 128 and 129 are duplicate copies of pages 92 and 93. Therefore, I will not consider pages 128 and 129 and my findings on pages 92 and 93 will apply equally to pages 128 and 129.

The records that remain at issue in this appeal consist of pages 6 to 11 (Supplementary Record of Arrest, the Use of Force Report and Prisoner's Log), pages 92 to 95, 130 and 133 (correspondence between the Board and counsel for the affected persons) and pages 1A to 13A (police officers' notes of the incident).

DISCUSSION:

PRELIMINARY MATTER

I have reviewed all the records. With respect to the information on the top half of page 1A and all of page 13A, I find that it is not related to the request and therefore, not responsive. On that basis, I find that it falls outside the scope of this appeal and will not consider it further. This information must not be disclosed.

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 at issue and I find that the records, for the most part, relate to the appellant. I find that pages 3A and 4A also contain the personal information of an individual other than the appellant.

Most of the records were prepared and/or completed by the affected persons. While information relating to an individual in his/her employment or professional capacity generally does not qualify as the personal information of that individual, the finding is different where that individual’s professional conduct or performance is being evaluated or is under review. Therefore, in the circumstances of this appeal, I find that the information in the records relates to the appellant, the affected persons and other identifiable individuals and therefore constitutes their 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 the personal information of both the appellant and other individuals, and the Board determines that disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the Board 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 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 the disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy.

Sections 21(2), (3) and (4) of the Act provided guidance in determining whether the disclosure of the 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.

The Board submits that the presumption provided by section 21(3)(b) of the Act applies to all of the records at issue in this appeal. This section of the Act reads as follows:

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 Board submits that in making an award of compensation, the Board must be satisfied that an applicant suffered an injury as a result of an act constituting an act of violence under the Criminal Code. The Board states that the Supplementary Record of Arrest, the Use of Force Report, the Prisoner's Log and the officers' notes were all completed by the affected persons. Since these individuals are the alleged perpetrators in the application before the Board, it is the Board's position that these records were compiled as part of investigation into the charges against the affected persons and constitute the "criminal history" of these individuals. I do not agree.

In my view, these records were completed by the affected persons in their capacity as police officers and relate to a charge against the appellant. The Board's investigation relates to a determination of injury and/or loss suffered by an applicant, albeit as a result of an act of violence. Therefore, it is my view that the records at issue relate to the investigation of charges by the police against the appellant and **not** against the affected persons. Accordingly, I find that the presumption under section 21(3)(b) does not apply to pages 6 to 11 and 1A to 13A. For the same reasons outlined above, I find that section 21(3)(b) also does not apply to pages 92 to 95, 130 and 133.

If none of the presumptions in section 21(3) apply, the Board 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 Board has not specifically made submissions on factors which may be relevant to the protection of the record. However, it states that the sensitive nature of the personal information (section 21(2)(f)) is relevant in the circumstances of this case. The Board also points out that the correspondence to and from counsel for the affected persons (pages 92 to 95, 130 and 133) contains the name and employment address of the affected person. Also that pages 1A, 3A, 4A and 13A contain the names, addresses and other information of individuals other than the appellant and the affected persons.

I have carefully reviewed the records together with the representations of the Board. I have also considered the relevant factors under section 21(2) together with all circumstances of this appeal. I make the following findings:

1. I have previously found that the name, address and other personal information on pages 1A and 13A is not responsive to the request and therefore, beyond the scope of this appeal.
2. With respect to the name and address listed on pages 3A and 4A of the police officers' notes, I note that this information was provided by the appellant to the police. Consequently and for the reasons articulated in other orders of the Commissioner, I find that disclosure of the same information to the appellant would not constitute an unjustified invasion of privacy (Orders M-384, P-1091 and P-1414). Therefore, this information should be disclosed to the appellant.
3. The factor in section 21(2)(f) is relevant and weighs in favour of protection but only with respect to the names and address of employment of the affected persons. I find that this factor (highly sensitive) is not relevant to the remaining information in the records which

is the personal information of the appellant. In balancing the rights of the affected persons to protection against the right of the appellant to his own personal information, I find that the right of access prevails in the circumstances of this appeal. Therefore, I find that disclosure of the remaining information in the records would not constitute an unjustified invasion of privacy of the affected persons. I find that the exception in section 21(1)(f) applies and section 49(b) does not apply.

ORDER:

1. I uphold the Board's decision to deny access to the names and address of employment of the affected persons in pages 92 to 95, 130 and 133.
2. I order the Board to disclose the remaining information in the records to the appellant by sending him a copy of the records by **August 21, 1997** but not before **August 18, 1997**.
3. In order to verify compliance with this order, I reserve the right to require the Board to provide me with a copy of the records disclosed to the appellant pursuant to Provision 2 above.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ July 17, 1997