



Information and Privacy
Commissioner/Ontario

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

ORDER P-1426

Appeal P_9700072

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). The request was for access to any handwritten notes taken by a named Ontario Provincial Police (O.P.P.) Officer with respect to an incident involving the requester which took place on June 20, 1996. The Ministry located the responsive records, consisting of three pages of notes and denied access to them, claiming the application of the invasion of privacy exemptions contained in sections 21(1) and 49(b) of the Act.

The requester, now the appellant, appealed the Ministry's decision to deny access. During the mediation of the appeal, the appellant agreed that he was not seeking access to those portions of the officer's notebook containing information that did not relate to the incident in which he was involved. A Notice of Inquiry was provided to the appellant, the Ministry and to two other individuals whose interests may be affected by the disclosure of the records (the affected persons). Representations were received from all of the parties to the appeal.

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 I find that they contain the personal information of the appellant, his wife and the affected persons.

INVASION OF PRIVACY

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 49 sets out exceptions to this general right of access.

Where a record contains the personal information of both the appellant and other individuals, section 49(b) of the Act allows the Ministry to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Sections 21(2), (3) and (4) provide guidance in determining whether disclosure of personal information would 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 Ministry can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it. If none of the presumptions in section 21(3) apply, the Ministry must consider the factors listed in section 21(2), as well as any/all other relevant circumstances.

The Ministry states that the personal information contained in the records was compiled as part of an OPP investigation into a potential violation of law, the commission of a criminal offense by the appellant. Accordingly, the Ministry argues that the presumption in section 21(3) applies to exempt this information from disclosure. This section provides:

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 appellant submits that because there was no further investigation beyond the initial contact with the O.P.P. officer, the presumption in section 21(3)(b) should not apply. In my view, however, the Ministry is only required to demonstrate that an investigation into a possible violation of law took place in order to bring the records which were compiled and are identifiable as part of the investigation within the ambit of the presumption in section 21(3)(b) [Orders P-223 and P-237].

Based on the submissions of the Ministry and my review of the records, I find that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, the Criminal Code. In addition, I find that the exceptions contained in section 21(4) have no application in the present appeal. The appellant has not claimed the application of section 23. As I have found that the presumption in section 21(3)(b) applies, I find that the disclosure of the information contained in the records would constitute an unjustified invasion of the personal privacy of the affected persons and the records are properly exempt under section 49(b).

ORDER:

I uphold the Ministry's decision to deny access to the records.

Original signed by: _____
Donald Hale
Inquiry Officer

July 17, 1997