



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1448

Appeal P\_9700165

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 copies of any letters written to the Public Complaints Commission (the PCC) by a named individual (the affected person) in which the requesters are mentioned. The Ministry denied access to the records based on the exemptions found in sections 49(b) and 21(3)(b) (invasion of privacy) of the Act. The requesters (now the appellants) appealed the Ministry's decision.

During the course of mediation, the appellants advised the Appeals Officer that they are seeking access only to the portions of the records where the affected person wrote comments about the appellants.

The record consists of one eight-page letter written by the affected person.

This office sent a Notice of Inquiry to the appellants, the Ministry and the affected person. Representations were received from all parties.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, as recorded information about an identifiable individual. I have reviewed the record at issue and find that it contains the personal information of the affected person, the appellants and other individuals.

Where a record contains the personal information of both the appellants and other individuals, section 49(b) allows the Ministry 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. The appellants are not required to prove the contrary.

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. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act or where a finding is made under section 23 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption.

The Ministry submits that the presumptions contained in sections 21(3)(b) (information compiled and identifiable as part of an investigation into a possible violation of law), and 21(3)(g) (personal recommendations or evaluations) apply to the personal information at issue. The affected person submits that the information contained in the record is highly sensitive (section 21(2)(f)) and that it was provided strictly in confidence (section 21(2)(h)).

The appellants believe that the affected person has obtained information about them in an unconscionable fashion as a result of that person's employment position, and believe that the contents of the letter will confirm this. In my view, this consideration is relevant in the circumstances of this appeal.

Having reviewed the representations of the parties and the records, I find that the letters contain information which initiate complaints to the PCC and thus form part of the PCC investigation process. The investigation was conducted pursuant to the Police Services Act. Previous orders of this office have determined that investigations by the PCC qualify as law enforcement activities (Order P-659). I am satisfied that the personal information was compiled and is identifiable as part of the investigation into a violation of law. Accordingly, the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b).

As I indicated above, a presumption under section 21(3) can only be overcome if the personal information at issue falls under section 21(4) of the Act or where a finding is made under section 23 of the Act.

None of this information falls within the ambit of section 21(4). Nor have the appellants submitted that section 23 of the Act applies to this personal information. Accordingly, the exemption in section 49(b) applies to the record.

Because of these findings it is not necessary to consider the application of the other exemptions claimed by the Ministry and the affected person.

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_ September 5, 1997