



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1528**

**Appeal P-9700340**

**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 information concerning an investigation by the Ontario Provincial Police (the OPP) into allegations of criminal wrongdoing by the appellant. Specifically, the appellant sought access to any police officer's notes, witness statements, memoranda, reports and correspondence dealing with the allegations against him.

The Ministry located a number of responsive records and denied access to them, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 14(1)(a) and (b)
- right to a fair trial - section 14(1)(f)
- invasion of privacy - sections 21(1) and 49(b)
- discretion to refuse requester's own information - section 49(a)

The appellant appealed the Ministry's decision.

This office provided a Notice of Inquiry to the appellant and the Ministry, soliciting their submissions with respect to the application of the exemptions claimed to the records at issue. During the inquiry stage of the appeal, the Ministry advised this office and the appellant that a decision had been reached not to lay any criminal charges against the appellant. As a result, the Ministry indicated that it is no longer relying on the application of sections 14(1)(a), (b), (f) or 49(a) to deny access to the records. The Ministry also disclosed portions of the records to the appellant. There remain at issue, however, a number of records which include witness statements, evidence summaries and correspondence relating to the OPP investigation into the allegations against the appellant.

Representations were received from both parties with respect to the remaining issues and records.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual. I have reviewed the records and find that they contain the personal information of the appellant and a number of other identifiable individuals.

### **INVASION OF PRIVACY**

The appellant submits that section 21(1)(d) provides an exception to the general prohibition against the disclosure of personal information to any person other than the individual to whom it relates. This section states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

under an Act of Ontario or Canada that expressly authorizes the disclosure.

The appellant argues that the Ministry is in possession of certain statements and submissions which were made to the Criminal Injuries Compensation Board (the Board) pursuant to the Compensation for Victims of Crime Act (the CVCA). He states that, under section 9(1) of the CVCA, notice of the hearing of an application before the Board or one of its members is to be served on any person having an interest in the application. The appellant argues that because he was the alleged offender named in an application made to the Board, the information included in the application falls within the exception in section 21(1)(d).

In my view, section 9(1) of the CVCA states only that interested parties to an application before the Board or one of its members are entitled to notice of the hearing. It does not “expressly authorize” the disclosure of the information which substantiates an application to the Board, as is contemplated by section 21(1)(d). For this reason, I find that the exception in section 21(1)(d) has no application in the present circumstances.

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 Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the Ministry has the discretion to deny the requester access to that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. 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.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Ministry states that the personal information contained in the record was compiled as part of an OPP investigation into a potential violation of law, the commission of a criminal offence by the individuals named in the records, including the appellant. Accordingly, the Ministry argues that the presumption in section 21(3)(b) 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's arguments focus on the fact that the disclosure of the personal information contained in the records is relevant to a fair determination of his rights with respect to a contemplated civil proceeding against his former employer or an application under the CVCA, as contemplated by section 21(2)(d). However, no single factor or combination of considerations under section 21(2) are sufficient to override the application of a presumption under section 21(3), as was established by the Ontario Court (General Division) in Re John Doe et al. and Information and Privacy Commissioner et al. (1993), 13 O.R. (3d) 767 (Divisional Court).

Based on the submissions of the Ministry and my review of the records, I find that the personal information contained in the records 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, the disclosure of the information contained in the records would constitute an unjustified invasion of the personal privacy of other identifiable individuals and the records are properly exempt under section 49(b).

**ORDER:**

I uphold the Ministry's decision and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_  
February 11, 1998