



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1522

Appeal P-9700293

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General and Correctional Services (the Ministry). The request was for access to records relating to the Ontario Provincial Police (OPP) investigation of a complaint that a named individual had allegedly impersonated an OPP officer during a telephone call to another individual.

After clarifying the request with the appellant, the Ministry located responsive records and denied access to them based on the following exemptions:

- discretion to deny appellant's own information/law enforcement - sections 14(2)(a) and 49(a); and
- invasion of privacy - sections 21 and 49(b)

The appellant appealed the Ministry's decision. A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from the Ministry.

RECORDS:

There are 12 pages of records at issue and they consist of a general occurrence report and portions of a police officer's notebook.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual. I have reviewed the record and find that it contains the personal information of the appellant and a number of other identifiable individuals. In addition, the record refers to certain persons in their professional or employment capacities and, as such, this information does not qualify as the personal information of these individuals.

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 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. 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.

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, the disclosure of the information contained in the record would constitute an unjustified invasion of the personal privacy of the affected persons and the record is properly exempt under section 49(b).

Because of the manner in which I have addressed the application of the invasion of personal privacy exemption in section 49(b), it is not necessary for me to address the possible application of sections 14(2)(a) and 49(a).

ORDER:

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

Original signed by: _____
Holly Big Canoe
Inquiry Officer

January 29, 1998