



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1558**

**Appeal P-9700349**

**Police Complaints Commissioner**



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## **NATURE OF THE APPEAL:**

The Police Complaints Commissioner (the PCC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the contents of a specific file. The file relates to an investigation into a complaint made by the requester against a police officer. The PCC responded by granting partial access to the responsive records. Access was denied to two pages pursuant to sections 14(1)(a) and 14(2)(a) (law enforcement) of the Act.

The requester, now the appellant, appealed the decision to deny access. In his letter of appeal, the appellant questioned the application of the discretionary exemptions, sections 14(1)(a) and 14(2)(a), pursuant to sections 1, 7 and 15(1) of the Canadian Charter of Rights and Freedoms (the Charter).

The records to which access was denied consist of a letter from the office of the PCC to a police officer (Record 11) and a memorandum from the City of St. Thomas Police to the PCC (Record 23).

This office provided a Notice of Inquiry to the appellant and the PCC. As it appeared that the records contained the personal information of the appellant and other individuals, the parties were asked to comment on the possible application of sections 21(1) and 49(a) and (b). The parties were also asked to comment on the appellant's submissions regarding the application of the Charter. Representations were received from both parties.

## **PRELIMINARY ISSUE:**

The appellant raised the validity of subsections 14(1)(a) and 14(2)(a) of the Act under sections 7 and 15 of the Charter. I notified the appellant of the requirements of section 109 of the Courts of Justices Act and requested the appellant to comply with the notice requirements of this section by April 21, 1998. Section 109, which applies to proceedings before tribunals as well as to courts, requires a person who seeks a ruling that a legislative provision is constitutionally invalid, to serve a Notice of Constitutional Question on the Attorney General of Canada, the Attorney General of Ontario and any other parties. The appellant has not given the required notice by April 21, 1998, and I am accordingly unable to consider his arguments regarding the validity of the discretionary exemptions.

## **DISCUSSION:**

### **DISCRETION TO REFUSE APPELLANT'S OWN INFORMATION/LAW ENFORCEMENT**

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 Record 11 contains the personal information of the appellant and the police officer who was the subject of the appellant's complaint. Record 23 contains the personal information of the appellant and another identifiable individual.

Under section 49(a) of the Act, the PCC has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. Section 49(a) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. [emphasis added]

The PCC has exercised its discretion to refuse access to the records at issue under sections 14(1)(a) and 14(2)(a). In order to determine whether the exemption provided by section 49(a) applies to the information in these records, I will first consider whether the exemptions in sections 14(1)(a) and 14(2)(a) apply.

### **Section 14(1)(a)**

Sections 14(1)(a) states:

A head may refuse to disclose a record where if the disclosure could reasonably be expected to,

interfere with a law enforcement matter.

The purpose of the section 14(1)(a) exemption is to provide the PCC with the discretion to refuse access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter. The PCC bears the onus of providing evidence to substantiate that, first, a law enforcement investigation is ongoing and second, that disclosure of the records could reasonably be expected to interfere with that investigation.

Previous orders of the Commissioner have held that an investigation into a public complaint against a police officer is a law enforcement matter since it can lead to charges against the subject officer and a hearing before a Board of Inquiry under the PSA (Orders P-1250 and P-932). Therefore, I accept that the records relate to a law enforcement matter.

On January 1, 1998, Part VI of the Police Services Act (the PSA) was repealed by the Police Services Amendment Act, 1997 (the PSAA). However, under sections 79(2) and (3) of the PSAA, complaints made to the PCC before this date may be continued in accordance with Part VI.

The PCC states that the investigation review, begun by the PCC, is being continued by the Ontario Civilian Commission on Police Services pursuant to section 79(4) of the PSAA. The records relate to this ongoing review. I am satisfied that the records relate to an ongoing law enforcement matter.

However, the PCC is silent as to how disclosure of the information in the records could reasonably be expected to result in the harm referred to in section 14(1)(a). There is nothing on

the face of the records to suggest the harm which might result from disclosure and I have not been provided with any evidence in this regard. I find, therefore, that the exemption in section 14(1)(a) does not apply.

### **Section 14(2)(a)**

In order for a record to qualify under section 14(2)(a) of the Act, the PCC must satisfy each part of the following three-part test:

1. The record must be a report; **and**
2. The record must have been prepared in the course of law enforcement, inspections or investigation; **and**
3. The record must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

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The records relate to the PCC's review of the decision by the Chief of Police under section 91(1) of the PSA. Parts 2 and 3 have been satisfied.

The word "report" is not defined in the Act. However, previous orders have found that in order to qualify as a report, a record must consist of a formal statement or account of the results of the collection and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Orders P-390 and P-1422).

I have reviewed the records. In my view, the records contain recordings of fact only and, therefore, do not qualify as "reports" for the purposes of section 14(2)(a) of the Act. Accordingly, the records do not qualify for exemption under section 14(2)(a) and section 49(a) does not apply.

### **INVASION OF PRIVACY**

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals, and the PCC determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the PCC has the discretion to deny the requester access to that information. In this situation, the requester is not required to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual.

Since the requester has a right of access to his/her 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 disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

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.

The PCC submits that Record 11 represents correspondence sent by it to a police officer and that Record 23 was sent to the PCC by the police force. The PCC submits that both records are “explicitly or implicitly of a private to confidential nature”. The PCC submits that where, as in the present case, the records contain the personal information of the appellant and other individuals, then it follows that the institution has the discretion to deny access under sections 49(b).

I have carefully reviewed the records. The PCC has not provided me with any evidence to support its assertion that the information in the records is confidential. There is nothing on the face of the records to indicate that the records are implicitly or explicitly of a confidential nature. I note that the personal information which relates to other individuals consists of their names and other identifying information. I am prepared to accept that this information may be sensitive within the context of the complaint and the resulting investigation.

I find, however, that after deleting the names and identifying information of other individuals in Records 11 and 23, the remaining information relates only to the appellant. In my view, disclosure of this remaining information to the appellant would not constitute an unjustified invasion of personal privacy. I have highlighted the names and other identifying information on the copy of the records provided to the PCC’s Freedom of Information and Privacy Co-ordinator with a copy of this order. The highlighted portions should **not** be disclosed to the appellant.

In summary, I find that disclosure of the remaining (non-highlighted) information to the appellant would not constitute an unjustified invasion of personal privacy under section 49(b).

### **ORDER:**

1. I uphold the decision of the PCC to withhold access to the portions of the records which are highlighted on the copy of the records being sent to the PCC with a copy of this order.
2. I order the PCC to disclose the remaining non-highlighted parts of the records to the appellant by sending him a copy by **May 21, 1998**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the PCC to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_

Mumtaz Jiwan  
Inquiry Officer

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April 30, 1998