



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-1711

Appeal PA-980249-1

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) for records relating to:

The number and nature of any concerns and/or complaints regarding OPP response time in the former Malden Township area since January 1, 1997. If there were any, I further request the action taken by the OPP to resolve the complaint; as well as any follow-up action taken and any documents supporting all of the above.

The Ministry advised the requester that only one complaint had been received. The Ministry identified 13 pages of responsive records relating to this complaint, and denied access to all of them, pursuant to section 21 of the Act. The Ministry identified the factors and presumptions listed in sections 21(2)(f), 21(2)(h), 21(3)(b) and 21(3)(d) in support of its decision.

The requester (now the appellant) appealed the Ministry's decision. She also claimed that there was a compelling public interest in disclosure of the record pursuant to section 23 of the Act.

As a result of mediation efforts, three individuals consented to disclosure of any information related to them which appeared in the records. A fourth person did not consent to any disclosure, and a fifth person, the Deputy Mayor of the Town of Amherstburg (the Deputy Mayor), consented to disclosure of some but not all information relating to him. As a result, the Ministry issued a revised decision to the appellant, granting access in full to a newspaper article and pages 10, 11 and 12, and partial access to pages 1-9 and 13 of the records. The appellant also agreed not to pursue access to the home address of the Deputy Mayor which appears on pages 6, 7, 8 and 13. This address is the only undisclosed information severed from pages 8 and 13, so these pages are no longer at issue in this appeal.

The pages which remained at issue at the end of mediation consisted of:

- portions of a five-page memorandum dated June 3, 1998, prepared by an OPP officer and submitted to the OPP Detachment Commander, outlining the results of the investigation undertaken in response to the complaint (pages 1-5);
- portions of a two-page letter dated May 2, 1998 from the Deputy Mayor to the Premier of Ontario regarding police services in his community (pages 6-7);
- portions of a three-page letter dated July 15, 1998 from the OPP Western Region Commander to the Deputy Mayor, responding to the May 2 letter (pages 9-10 - the undisclosed portions of page 8 are no longer at issue, as noted above);
- an eight-page Agreement for the Provision of Police Services, which the Ministry claims was not responsive to the request (the Agreement).

A Notice of Inquiry was sent to the Ministry, the appellant, the Deputy Mayor and the individual who did not consent to disclosure of information relating to him (the affected person). Representations were received from the Ministry, the appellant and the Deputy Mayor.

In its representations, the Ministry reversed its position with respect to the Agreement, and disclosed this record to the appellant.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

The appellant’s representations focus exclusively on information relating to the Deputy Mayor, and make no reference to the affected person. The appellant submits:

None of the information contained in the records qualifies as personal information as defined in the Act because it is associated with the Deputy Mayor and others in an official government capacity. Clearly, his status as Deputy Mayor is noted in the letterhead, his signature, and the body of the letter. He didn’t write to the Premier as a concerned individual; he wrote “from a customers perspective as an **elected official** I must also ask, are we receiving the level of service promised in return for the fees paid for?” [emphasis in original]

The Deputy Mayor states that:

Any internal reports generated as a result of the internal investigation and interviewing the affected parties and the information contained along with the conclusions would be based on third party information from the affected residents and should remain privileged.

The Deputy Mayor makes no specific reference to any information relating to him, and focuses the rest of his representations on the section 23 issue.

The Ministry’s only representations on this issue are the following:

The Ministry submits that the records remaining at issue consist of recorded personal information about a number of identifiable individuals. The records do not contain any of the appellant’s personal information.

The portions of records relating to the affected person consist of his name and address, facts relating to the investigation of a crime of which he was the victim, and comments he made to the police regarding the response time and the investigation of criminal activity which took place at his home. I find that this information clearly falls within the scope of the definition of personal information in section 2(1) of the Act.

As far as information about the Deputy Mayor is concerned, this information relates to activities undertaken in an official government capacity as an elected official of the Town, and I agree with the appellant that this does not constitute personal information for the purposes of section 2(1). Previous orders of this Office have drawn a distinction between personal information and information about a person who is acting in a professional or official government capacity. Where it is clear that the person is acting in an official capacity, information has been found not to be “about the individual” and does not qualify as “personal information” (see Orders 139, P-157, P-194, P-257, P-326, P-377, P-470, P-477, P-1538 and M-82 and Reconsideration Order R-980015). In Order 139, for example, the name and professional affiliation of a welfare worker who had lodged a complaint in her official capacity about the eligibility of another individual to receive benefits was held not to constitute the welfare worker’s personal information where this information appeared in a report of the complaint.

The Deputy Mayor in this case submitted a complaint to the Premier of Ontario about OPP response time in his community, and clearly did so in his capacity as an elected official. The Deputy Mayor would appear to acknowledge this when he states in his representations:

... there would be no benefit to the public to release the internal documents of the OPP, nor my original letter which was simply to forward third party information having been conveyed to me as Deputy Mayor to those in authority.

I find that any information relating to the Deputy Mayor, other than his home address which has been removed from the scope of this appeal, is not information about the Deputy Mayor in any personal sense, and does not satisfy the definition of “personal information” contained in section 2(1).

Some severed information does not relate to either the Deputy Mayor or the affected person. It describes policing services and refers to a second potential complaint that is not linked in any way to any person. I find that none of this information is “about an identifiable individual”, nor could its disclosure lead to the identity of any individual, and these parts of the records do not contain personal information.

Therefore, the only parts of the records which contain personal information are those that relate to the affected person, which are found on pages 2 and 3.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. One of these circumstances is found in section 21(1)(f), which reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

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

The Ministry's representations on this issue raise factors under section 21(2) in support of its position that disclosure of information about the Deputy Mayor would constitute an unjustified invasion of his privacy. Because I have determined that none of the records contain personal information of the Deputy Mayor, the Ministry's submissions on this issue are not relevant.

The appellant's representations on this issue also focus on information concerning the Deputy Mayor, and make no specific reference to the application of section 21(1) to the personal information of the affected person.

The Ministry also identifies the presumption contained in section 21(3)(b) of the Act, which states:

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 Ministry submits:

The records at issue in the appeal contain details of the investigation undertaken by the former Malden Detachment of the OPP in regard to a ... break-in at the home of a named Amherstburg resident (the victim). Three [persons were subsequently charged] in respect to the break-in at the victim's residence. The Ministry submits that disclosure of the exempt information would constitute an unjustified invasion of the victim's personal privacy in accordance with section 21(3)(b).

I agree. The portions of page 2 and the first severed paragraph on page 3 of the records, which consist of a recitation of some of the details of the original criminal investigation involving the affected person's property, was compiled and is identifiable as part of an investigation into a possible violation of law. As such, I find that it falls within the scope of the section 21(3)(b) presumption.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2) (John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767).

Although a presumption can be rebutted by section 21(4), the personal information of the affected person that appears on page 2 and the first severed paragraph of page 3 of the records does not fall under any of the provisions of that section.

Therefore, I find that the personal information of the affected person on page 2 and the first severed paragraph of page 3 of the records qualifies for exemption under section 21(1) of the Act.

The remaining portions of page 3 which contain the affected person's personal information deal with comments made by the affected person about the service provided by the police in responding to the break-in at his home.

Section 21(1) is a mandatory exemption claim, intended to protect the interests of affected persons in situations where a requester has sought access to their personal information. The affected person in this appeal has not consented to disclosure of his personal information. At the same time, the appellant has provided no representations to support her position that section 21(1) should not apply to the affected person's personal information. In the absence of any such representations, or any other evidence weighing in favour of a finding that disclosure of the remaining undisclosed personal information of the affected person on page 3 of the records would not constitute an unjustified invasion of his personal privacy, I find that it would.

Therefore, I find that the remaining personal information of the affected person on page 3 of the records also qualifies for exemption under section 21(1) of the Act.

COMPELLING PUBLIC INTEREST

Section 23 of the Act states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

The appellant's arguments under section 23 do not relate specifically to the portions of the records that qualify for exemption under section 21(1). Rather, they deal with long-standing concerns regarding the provision of policing services in the Amherstburg community and the role played by the Deputy Mayor in various aspects of this issue.

I am not persuaded that there is a compelling public interest in disclosure of the portions of the records containing personal information of the affected person, which I have found qualify for exemption under
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section 21(1). Nor am I satisfied that any public interest that may exist would clearly outweigh the purpose of this mandatory exemption. Therefore, I find that section 23 has no application in the circumstances of this appeal.

ORDER:

1. I uphold the Ministry's decision not to disclose the personal information of the affected person which appears on pages 2 and 3 of the records. I have attached a highlighted copy of these two pages with the copy of this order sent to the Ministry's Freedom of Information and Privacy Coordinator, which identifies the portions which should **not** be disclosed.
2. I order the Ministry to disclose all remaining pages of the records to the appellant, with the exception of the home address of the Deputy Mayor which appear on pages 6 and 7 of the records by **October 6, 1999**, but not before **October 1, 1999**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the pages of the records which are disclosed to the appellant pursuant to Provision 1 and 2.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ August 31, 1999