



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

ORDER PO-1854

Appeal PA-000245-1

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of the Solicitor General (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to documentation pertaining to himself for the time period February to March 1995.

The Ministry located responsive records and granted partial access to them. The Ministry withheld the remaining portions of the records on the basis of the following sections of the *Act*:

- discretion to refuse requester's own information - section 49(a) in conjunction with;
- facilitate commission of an unlawful act - section 14(1)(l); and
- law enforcement report - section 14(2)(b); as well as
- invasion of privacy - section 49(b) with reference to sections 21(2)(f) (highly sensitive information) and 21(3)(b) (information compiled as part of an investigation into a possible violation of law).

In addition, the Ministry advised the appellant that portions of the records were not responsive to his request.

The appellant appealed the Ministry's decision.

During mediation, and within the 35 day permitted time period for raising discretionary exemptions, the Ministry issued a second decision letter in which it added the application of sections 49(a) and 14(1)(e) (endanger life or safety) of the *Act* to exempt all of the information at issue.

I sent a Notice of Inquiry setting out the facts and issues in the appeal to the Ministry, initially. The Ministry submitted representations in response and the non-confidential portions of them were sent to the appellant along with a modified Notice of Inquiry. The appellant did not submit representations in response.

RECORDS:

The records at issue consist of the withheld portions of two arrest reports, four supplementary reports and a general occurrence report, totalling 12 pages.

PRELIMINARY MATTER:

NON-RESPONSIVE RECORDS

The Ministry withheld portions of Pages 1, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the records as being non-responsive to the request. The Ministry takes the position that this information relates to the administrative retrieval of the records from the computer and that it has no investigative substance as requested by the appellant.

In Order P-880, former Adjudicator Anita Fineberg defined “responsive” as meaning “reasonably related to the request.” I agree with this interpretation.

In reviewing the portions of the records that the Ministry has identified as non-responsive, I am satisfied that they all relate to the retrieval of the record in response to the appellant’s access request rather than forming part of the record itself. Accordingly, I find that these portions of the records are not reasonably related to the request and are properly withheld as being non-responsive to the request.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the *Act* defines “personal information”, in part, as recorded information about an identifiable individual. The Ministry submits that the records all contain information about identifiable individuals other than the appellant, including their names, addresses and personal views or opinions. The Ministry does not acknowledge directly that the records contain the appellant’s personal information, but rather, states:

The records contain the personal information of identifiable individuals who were the subject of or questioned during a police investigation. Some records detail the views and opinions of witnesses, and individuals that were subject to this investigation.

Based on my review of the records, I find that they all contain the appellant’s personal information as he was the primary “subject” in the investigation. I find that the records also contain the personal information of a number of other identifiable individuals as persons involved in or witness to the matter being investigated.

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

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. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

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].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 23 exemption.

The Ministry claims that the presumption in section 21(3)(b) and the factor in section 21(2)(f) apply to the personal information in the records. These sections state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(b) 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.

Section 21(3)(b)

The Ministry states that the entire record was compiled during a law enforcement investigation conducted by the Ontario Provincial Police (the OPP) to determine whether criminal violations had occurred.

In commenting on its exercise of discretion under section 49(b), the Ministry indicates that there is a history to the matter involving the appellant, referring to particulars of the records and another appeal. The Ministry also makes note of the nature of the matter and indicates that it remains sensitive and volatile.

The records, on their face, clearly indicate that the OPP investigated a matter involving the appellant and a number of individuals for the purpose of determining whether offences under the *Criminal Code* had been committed. On this basis, I am satisfied that disclosure of the personal information in them would constitute a presumed unjustified invasion of personal privacy as this information was compiled and is identifiable as part of an investigation into a possible violation of law. I find further that neither section 21(4) nor 23 are applicable in the circumstances of this appeal. I also accept the Ministry's reasons for exercising its discretion in favour of non-disclosure of the personal information of other individuals in the circumstances. Accordingly, I find that the personal information in the records is exempt under section 49(b).

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/FACILITATE COMMISSION OF AN UNLAWFUL ACT

As I indicated above, 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.

The Ministry has relied on section 49(a) to deny access to the undisclosed portions of the records. Under section 49(a), an institution has the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information [my emphasis].

The Ministry claims that section 14(1)(l) applies to the "ten-codes" in the OPP officers' notes. These references are found on pages 1, 4, 5, 7, 9, 11 and 12 of the records at issue.

Section 14(1)(l) states:

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

facilitate the commission of an unlawful act or hamper the control of crime.

The Ministry states that "ten-codes" are used by OPP officers in their radio communications with each other. The Ministry submits that release of the "ten-codes" would compromise the effectiveness of police communications and possibly jeopardize the safety and security of OPP officers. In this regard, the Ministry details how this could reasonably be expected to occur. The Ministry relies on previous orders of this office which have upheld the application of section 14(1)(l) or its municipal equivalent to "ten-codes" (see Orders M-393 and M-757).

In determining this issue, I have taken into account the previous decisions of this office and I concur with them. In my view, disclosure of the "ten-codes" would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space. Therefore, I find that the Ministry has properly applied section 14(1)(l) to this information and it is exempt under section 49(a) of the *Act*.

Because of the findings I have made, it is not necessary for me to consider the other exemptions claimed by the Ministry.

ORDER:

1. I uphold the Ministry's decision.

Original signed by: _____

_____ January 12, 2001

Laurel Cropley

Adjudicator