



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2052

Appeal PA-010284-1

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 now the Ministry of Public Safety and Security (the Ministry) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of an “OMPPAC” (Ontario Municipal Provincial Police Automated Co-operative) report and toxicology report relating to the death of her son.

The Ministry located the two responsive records and granted access to an autopsy report (which it identified as being responsive to the request for the toxicology report). The Ministry granted partial access to a sudden death report (which it identified as being responsive to the request for the OMPPAC report), citing section 49(a) (discretion to refuse requester’s own information) in conjunction with section 14(2)(a) (law enforcement report) and section 49(b) with reference to sections 21(2)(f) and 21(3)(b) (invasion of privacy) of the *Act* as the basis for withholding portions of this record. The Ministry also indicated that some of the information was severed from this record as it was deemed to be not responsive to the appellant’s request.

The appellant appealed the Ministry’s decision.

During the mediation stage of the appeal process, the appellant’s representative confirmed that the appellant was not pursuing access to the information that was marked as not responsive to the request.

Further mediation could not be effected, and the appeal was forwarded to adjudication. This office sought representations from the Ministry initially, and sent it a Notice of Inquiry setting out the facts and issues on appeal. The Ministry submitted representations in response.

Along with its representations the Ministry included a copy of a new decision letter in which it advised that, after consultations with affected parties, it had decided to release additional information from pages 2, 7 and 10 of the sudden death report to the appellant. As a result of this disclosure, page 10 is no longer at issue.

In addition, the Ministry indicated in this new decision that it is withdrawing its reliance on the discretionary exemptions in sections 49(a) and 14(2)(a). Accordingly, these exemptions are no longer at issue.

This office then sent a Notice of Inquiry to the appellant, modified to reflect the change in circumstances following the Ministry’s amended decision, and a copy of the Ministry’s representations in their entirety. The appellant submitted representations in response.

The Ministry was subsequently asked to make representations in reply, which it did.

RECORD:

The record at issue is a ten-page police sudden death report . Specifically, the severed portions of the following pages are at issue: 1, 2, 7 and 9. In respect of page 2, only the severances in lines 2 and 11 of the first paragraph are at issue.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

The Ministry has disclosed the vast majority of the sudden death report to the appellant. The information at issue consists of the names of identifiable individuals and a small amount of information pertaining to them, such as date of birth, age and address and/or information pertaining to their involvement in the police investigation.

The Ministry simply states that the record contains the personal information of identifiable individuals.

The appellant takes the position that:

[T]he requested information would not reveal personal information other than the names of individuals. According to *Order 27*... a name alone is not personal information ... It has not been shown why the release of these names would reveal other personal information relating to these individuals, other than their knowledge of the deceased.

The sudden death report contains information recorded by the attending Ontario Provincial Police (the OPP) officers during the investigation of the circumstances of the death of the appellant's son. As such, it includes information which identifies the individuals who were involved and/or interviewed and the nature of their involvement. As I noted above, the appellant has already received a large portion of the record. Although only the names of other involved individuals remain at issue, disclosure of them would reveal other personal information relating to them such as the nature of their involvement. Accordingly, I find that the portions of the record at issue contain recorded information about identifiable individuals other than the appellant. This record, taken as a whole, also contains the personal information of the appellant and her deceased son.

INVASION OF PRIVACY

Under section 49(b) of the *Act*, where a record contains the personal information of both the requester 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.

Section 49(b) of the *Act* introduces a balancing principle. The Ministry must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the Ministry determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the Ministry the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 49(b) applies, sections 21(2), (3) and (4) 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 Ministry 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 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 21 exemption (See: Order PO-1764).

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

The Ministry has relied on the "presumed unjustified invasion of personal privacy" in section 21(3)(b) of the *Act* and the factor listed under section 21(2)(f) of the *Act*. The appellant indicates that she is contemplating potential litigation relating to her son's death. She indicates that she is seeking the information at issue to determine whether these individuals may have relevant information regarding the "possible tortious (*sic*) acts of third parties". The appellant submits that she requires this information in preparing for this potential litigation. It appears that the appellant is raising the relevance of the factor in section 21(2)(d) in the circumstances of this appeal.

Section 21(3)(b)

This section 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 states:

The exempt information is contained in a police report documenting the investigation of the circumstances of the requester's son's death. In the course of the investigation, the OPP interviewed witnesses and other identifiable individuals. The Ministry submits that the exempt personal information was compiled and is identifiable as part of an investigation into a possible violation of law. The Ministry submits that the application of section 21(3)(b) of the [Act] is not dependent upon whether charges are actually laid (Orders P-223, P-237 and P-1225).

The appellant responds that:

It is of note that the Ministry does not explicitly state what violation of what law. It simply submits that police officers investigate violations of laws, and therefore this section applies.

The appellants submit that there was no violation of the law in this case ...The individuals named in the police report were never suspects or witnesses to any crime.

In response to the appellant's submissions, the Ministry refers to a previous order of this office (Order PO-1715) in support of its submission that "records relating to police sudden death investigations are subject to the presumption contained in section 21(3)(b).

In Order MO-1247, I made the following comments about sudden death investigations:

Many orders of this office have noted that when there is a "sudden death" in a manner similar to the appellants' son's death, the police are called in to determine whether there was any "foul play". In this regard, the attending officers conduct an investigation into the circumstances of the death, which have been found to be investigations into a possible violation of law (Orders M-1039, M-1079, M-1092, M-1115 and MO-1196, for example). I agree with the conclusions of this line of orders. In the circumstances of this appeal, I find that the presumption in section 14(3)(b) applies to the personal information which was compiled by the Police as part of their investigation into the circumstances of the appellants' son's death. This presumption still applies, even if, as in the present case, the investigation is not continued and no charges are laid (Orders P-223, P-237, P-1225, PO-1715 and MO-1197).

In Order PO-1715, Assistant Commissioner Tom Mitchinson arrived at similar conclusions regarding records concerning the investigation of a sudden death in that case, stating: “I am satisfied that the records were created as part of a police investigation into the circumstances surrounding the sudden death of the son, with a view to determining whether criminal charges should be laid against any individual under the *Criminal Code of Canada* (Order PO-1654).”

Similarly, I am satisfied that the personal information in the record was compiled and is identifiable as part of an investigation conducted by the OPP, which is an agency that has the function of enforcing the law, into the circumstances of the appellant’s son’s death. I am also satisfied that the purpose of the investigation, in part, was to determine whether there has been a violation of law. Therefore, I find that disclosure of the personal information in this appeal would constitute a presumed unjustified invasion of personal privacy pursuant to section 21(3)(b) of the *Act*. Further, this presumption still applies, even if, as in the present case, no charges were laid (Orders P-223, P-237 and P-1225).

Because the presumption in section 21(3)(b) cannot be rebutted by any of the factors under section 21(2), such as section 21(2)(d), which is relied upon by the appellant, it is not necessary for me to consider their relevance.

I find that none of the circumstances outlined in section 21(4) which would rebut a section 21(3) presumption are present in this appeal. The appellant has not raised the application of the public interest override and I find, in the circumstances of this appeal, that it does not apply.

Regarding its exercise of discretion under section 49(b), the Ministry states:

The Ministry is mindful of the major purposes and objectives of the [*Act*]. In its exercise of discretion, the Ministry carefully considered the potential benefits to the requester should additional information in the record be disclosed and also the importance of the record to the requester.

In this particular instance, the Ministry was satisfied that the exempt information consisted in part of highly sensitive personal information compiled and identifiable as part of an investigation into a possible violation of law. The Ministry was also satisfied that release of the information remaining at issue would cause personal distress to other individuals.

The Ministry carefully weighed the requester’s right of access to a record that contains her personal information against the other identified individuals’ rights to privacy protection. It should be noted that the Ministry has released a substantial amount of information to the requester.

I find nothing improper in the Ministry’s exercise of discretion in the circumstances of this appeal. Accordingly, I find that the personal information at issue in this appeal is exempt under section 49(b) of the *Act*.

ORDER:

I uphold the Ministry's decision.

Original signed by:
Laurel Cropley
Adjudicator

October 11, 2002