



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2138

Appeal PA-020043-1

Ministry of the Solicitor General



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

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), under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to the deaths of two identified individuals. The appellant sought access to records compiled by the Ontario Provincial Police (the OPP) in the course of their investigation into the deaths, as well as records in the custody of the Coroner's Office.

The Ministry located a number of records responsive to the request and denied access to them, claiming the application of the following exemptions contained in the *Act*:

- Security and law enforcement – section 14(1)(h);
- Information received in confidence from another government – section 15(b); and
- Invasion of privacy – section 21(1), with reference to the considerations listed at sections 21(2)(f) (the information is highly sensitive), 21(2)(h) (the information was provided in confidence), 21(2)(i) (the disclosure of the information would unfairly damage an individual's reputation) and the presumptions contained in sections 21(3)(a) (the information relates to an individual's medical condition), 21(3)(b) (the information was compiled as part of an investigation into a possible violation of law), section 21(3)(d) (the information relates to an individual's employment or educational history) and 21(3)(f) (the information describes an individual's finances).

The appellant appealed the Ministry's decision. During the mediation stage of the appeal, the scope of the appeal was limited to include only two documents, identified as Records 1373 (a House Book Note) and 1374 (an OPP press release). The Ministry indicated that it continues to rely on the invasion of privacy exemption in section 21(1) of the *Act* to exempt these two records, and the application of this section to the two pages referred to above remains as the only issue to be adjudicated.

This office sought representations from the Ministry, initially, and sent it a Notice of Inquiry setting out the facts and issues remaining on appeal. The Ministry made submissions, which were subsequently sent to the appellant, in their entirety, along with a copy of the Notice. The appellant did not make submissions.

RECORDS:

The sole records remaining at issue consist of Records 1373 (a House Book Note) and 1374 (an OPP press release).

CONCLUSION:

The records at issue are exempt from disclosure.

DISCUSSION:

PERSONAL INFORMATION

Personal information is defined, in part, as recorded information about an identifiable individual.

None of the records contain the appellant's personal information or the personal information of any party he is representing.

In its representations, the Ministry states:

As noted earlier, the appellant identifies the two deceased individuals by name in his statement of request. The record at issue contains information about the investigation conducted by the Office of the Chief Coroner and the OPP into the circumstances of the deaths of the two individuals. Although the deceased individuals are not named in the record at issue, in the circumstances of the appellant's request, the Ministry submits that the record at issue could be viewed as containing personal information about identifiable individuals.

I agree. In the circumstances, the appellant is aware of the identities of the two deceased individuals, having asked for the information by name. If there is a reasonable expectation that the individuals can be identified from the information, or through context, then that information qualifies as personal information (see: Order P-230). Therefore, I find that the records contain the personal information of the two deceased individuals.

INVASION OF PRIVACY

Introduction

Where a requester seeks access to records which contain only the personal information of other individuals, section 21(1) of the *Act* prohibits the disclosure of this information except in certain circumstances. Section 21(1)(f), which is particularly relevant here, states:

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.

Section 21(1)(f) is an exception to the section 21(1) prohibition against the disclosure of personal information. In order to establish that section 21(1)(f) applies, it must be shown that disclosure of the personal information at issue in this appeal would **not** constitute an unjustified invasion of personal privacy (see, for example, Order MO-1212).

In applying section 21(1)(f), 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 made representations 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*. However, because of my findings below, it is not necessary to address them.

As I indicated above, the appellant did not submit representations. In his request letter to the Ministry, the appellant described certain details relating to the two deceased individuals, the discovery of their bodies and the subsequent OPP investigation, and noted that, "at the time, there was much speculation about the cause of death ..."

In his letter of appeal, he stated:

While I can understand that investigations contain a lot of private information and thus should be protected, I believe that I am entitled to – at the very least – briefing notes, or e-mail exchanges that provide background information to the senior officials being briefed, and general information outlining the way the case is progressing or any surprises that may have been encountered. At the federal level, I am able to gain access to briefing notes about investigations. So I don't see why that shouldn't be the case at the provincial level.

In my view, the appellant's letters, in part, suggest a general interest in obtaining additional information about the deaths of the two individuals. I find, however, that general curiosity is not sufficient to support a conclusion that disclosure of personal information would not constitute an unjustified invasion of privacy. Therefore, I find that this unlisted consideration is not relevant in the circumstances.

In his letter of appeal, the appellant alludes to the factor in section 21(2)(a) (disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny). I

interpret his grounds for appeal as suggesting that in light of speculation in the community about the deaths, the community has an interest in monitoring or scrutinizing the activities of the OPP in investigating the matter.

The appellant has not provided any information to indicate that there might be something in the investigation to attract public scrutiny. Nor has he identified any tangible concerns that have been raised regarding this matter, apart from speculation and a natural curiosity that would reasonably be expected to surround an unexpected death, particularly in a small community.

In the circumstances, I am not persuaded that the factor favouring disclosure in section 21(2)(a) is relevant.

I have considered all of the other factors that favour disclosure in section 21(2), as well as all of the circumstances surrounding this matter and find that there is no basis to conclude that disclosure of the records at issue would not constitute an unjustified invasion of personal privacy. In the absence of representations from the appellant, I find that the exemption in section 21(1) applies to this information and it is, therefore, exempt from disclosure.

ORDER:

I uphold the Ministry's decision.

Original signed by:
Laurel Cropley
Adjudicator

April 22, 2003