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

ORDER PO-2285

Appeal PA-030342-1

Ministry of Public Safety and Security

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NATURE OF THE APPEAL:

The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Public Safety and Security (now the Ministry of Community Safety and Correctional Services) (the Ministry) for access to records relating to his arrest by the Ontario Provincial Police (OPP) on a specified date. On that date, the appellant was charged with the *Criminal Code* offence of uttering threats. The alleged victim was the appellant's wife.

Approximately one month after receiving the request, the Ministry received a "disclosure authorization" form, signed by the appellant's wife, indicating that the appellant's wife consented to her personal information being disclosed to the appellant.

The Ministry identified several records responsive to the request and denied access to all of them on the basis of the personal privacy (section 49(b)/21), law enforcement (section 49(a)/14) and relations with other governments (section 49(a)/15) exemptions in the *Act*.

The appellant then appealed the Ministry's decision to this office.

Mediation was not successful in resolving all of the issues in the appeal, so the matter was streamed to the adjudication stage of the process.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the Ministry, which provided representations in response. At the same time it submitted representations, the Ministry sent a letter to the appellant in which it indicated it had reconsidered its decision, and had decided to grant partial access to the records. The Ministry provided the appellant and me with a severed version of the records. The Ministry disclosed pages 1-3, 5, 8, 11 and 12 in part, and withheld pages 4, 6, 7, 9 and 10 in full. The Ministry indicated that it was relying on the exemptions at sections 49(b)/21 and 49(a)/14 to withhold information (the Ministry withdrew its reliance on the section 49(b)/15 exemption). The Ministry also advised that it was withholding information because it is "administrative information" that is not responsive the request.

I then sent the Ministry's non-confidential representations, together with the Notice, to the appellant, who in turn provided representations.

RECORDS:

The records containing the information at issue consist of 12 pages of police reports.

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates.

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

The Ministry submits:

> Personal information is defined in section 2(1) of the [*Act*] in part as follows:
>
> > "... recorded information about an identifiable individual ...."
>
> Personal information is further defined in section 2(1) to include:
>
> > (a) information relating to the ... age, sex ...marital or family status of the individual,
> >
> > (b) information relating to..., criminal ... history of the individual...,
> >
> > (d) the address, telephone number,...of the individual,
> >
> > (e) the personal opinions or views of the individual except where they relate to another individual,
> >
> > (g) the views or opinions of another individual about the individual, and
> >
> > (h) 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;
>
> . . . [T]he information remaining at issue contains the types of personal information listed above with respect to the appellant and other identifiable individuals.

The appellant makes no submissions on this specific issue.

I agree with the Ministry that the records contain personal information of the appellant, his wife and other witnesses, relating to their involvement in the incident leading up to the arrest and the criminal charge.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF OTHER INDIVIDUALS

Introduction

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

Sections 21(1) to (4) provide guidance in determining whether the "unjustified invasion of personal privacy" threshold under section 49(b) is met.

Section 21(1)(a): consent

The appellant implicitly relies on the exception at section 21(1)(a) to permit disclosure of information relating to his wife. That section reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

For reasons that I am not at liberty to disclose, I am not persuaded that the consent of the appellant's wife conforms with all of the requirements under section 21(1)(a) of the *Act*. Therefore, I find that it does not apply.

Section 21(3)(b): investigation into violation of law

The Ministry relies on the presumption of an unjustified invasion of privacy in section 21(3)(b) which reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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:

> . . . [T]he personal information remaining at issue consists of personal information that was compiled and is identifiable as part of an OPP investigation into a possible violation of law . . . [T]he OPP is an agency that has the function of enforcing the laws of Canada and the Province of Ontario. The [*Police Services Act*] provides for the composition, authority and jurisdiction of the OPP. Some of

> the duties of a police officer include investigating possible law violations, crime prevention and apprehending criminals and others who may lawfully be taken into custody.
>
> The exempt information documents the law enforcement investigation undertaken by the OPP in response to a domestic incident involving the appellant . . . [T]he exempt personal information was compiled and is identifiable as part of an investigation into a possible violation of law. In this particular instance, the investigation resulted in the appellant being charged with the Criminal Code offence of Uttering Threats.

The appellant makes no specific submissions on this point.

I agree with the Ministry that all of the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law, namely a breach of the *Criminal Code* as described above. Therefore, all of the withheld personal information relating to individuals other than the appellant qualifies for exemption under section 49(b) of the *Act*, in conjunction with section 21(3)(b), subject to my discussion of additional issues below.

Absurd result

The appellant takes the position that he should receive the information because he is already aware of it through the Crown disclosure process in the criminal proceedings. Specifically, he submits:

> All information and statements were disclosed to my lawyer after my arrest. An accused has the right to know and review the information that allegedly supported the criminal charge against them, with his counsel. I presently have all police documents/statements that were given by [the appellant's wife and two other identified witnesses].

The appellant is implicitly relying on the "absurd result" principle. Based on this principle, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 49(b) and/or 21, because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451, M-613]

- the requester was present when the information was provided to the institution [Order P-1414]

- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principal may not apply, even if the information was supplied by the requester or is in the requester's knowledge [Orders M-757, MO-1323, MO-1378].

Although the appellant may well be aware of much, if not all, of the information remaining at issue, this is a case where disclosure is not consistent with the purpose of the exemption, which is to protect the privacy of individuals other than the requester. In my view, this situation is similar to that in my Order MO-1378, in which the requester sought access to photographs showing the injuries of a person he was alleged to have assaulted:

> The appellant claims that the photographs should not be found to be exempt because they have been disclosed in public court proceedings, and because he is in possession of either similar or identical photographs.
>
> In my view, whether or not the appellant is in possession of these or similar photographs, and whether or not they have been disclosed in court proceedings open to the public, the section 14(3)(b) presumption may still apply. In similar circumstances, this office stated in Order M-757:
>
> > Even though the agent or the appellant had previously received copies of [several listed records] through other processes, I find that the information withheld at this time is still subject to the presumption in section 14(3)(b) of the *Act*.
>
> In my view, this approach recognizes one of the two fundamental purposes of the *Act*, the protection of privacy of individuals [see section 1(b)], as well as the particular sensitivity inherent in records compiled in a law enforcement context. The appellant has not persuaded me that I should depart from this approach in the circumstances of this case.

As in this previous case, I find that there is particular sensitivity inherent in these records, and that disclosure would not be consistent with the purpose of the exemption, and the absurd result principle therefore does not apply.

Severance

Where a record contains exempt information, section 10(2) requires the institution to disclose as much of the record as can reasonably be severed without disclosing the exempt information. An institution will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information.

Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed [Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)].

I have carefully reviewed the severances made by the Ministry, and I am satisfied that the Ministry did a reasonable job in severing the records and disclosing information to the appellant, while at the same time avoiding disclosing personal information of other individuals and avoiding disclosure of worthless information.

In the circumstances, it is not necessary for me to consider whether any of the information remaining at issue is exempt under section 49(a) in conjunction with section 14.

RESPONSIVENESS OF INFORMATION IN THE RECORDS/SCOPE OF THE REQUEST

In order to be responsive, a record must be "reasonably related to the request [see Orders P-880, PO-1941].

The Ministry takes the position that some of the information it is withholding is "administrative information" that is not responsive the request.

I have some difficulty accepting the Ministry's position. Normally, where a requester makes an access request and responsive records are identified, the entire record will be considered responsive, unless there is strong evidence based on the request or the nature of the record that portions are clearly outside the scope of the request. The most common example of this is the case where a page of a police officer's notebook contains passages relating to an incident entirely unrelated to the incident involving the requester (*e.g.*, an unrelated car accident). Here, it is not so clear that the "administrative" portions of the record relate to an entirely different matter or are not "reasonably related to the request". However, since the appellant is well aware of the Ministry's position and takes no issue with it, I will not reverse the Ministry's decision on this point.

ORDER:

I uphold the Ministry's decision to withhold portions of the records.

Original signed by: May 27, 2004
David Goodis
Senior Adjudicator