



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2254

Appeal PA-030329-1

Ministry of Public Safety and Security



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NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of Public Safety and Security (the Ministry) (now the Ministry of Community Safety and Correctional Services), made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) sought access to a copy of a specified incident report of the Blind River Ontario Provincial Police (OPP) detachment, especially “[a named individual’s] report and statement whether and why he considers the 17’ steel boat as his property.”

The Ministry located the incident report and provided access to portions of it, denying access to other portions in reliance on the exemption in section 49(b) of the *Act* (discretion to refuse requester’s own information), in conjunction with sections 21(2)(f) and 21(3)(b) (unjustified invasion of personal privacy). The Ministry also contends that two lines in the record are non-responsive to the request.

The appellant appealed the Ministry’s decision. As mediation through this office did not result in a resolution of the issues, it was referred to me for adjudication. I sent a Notice of Inquiry to the Ministry, initially, inviting it to submit representations on the issues in the appeal. The Ministry’s representations were shared with the appellant, who was also invited to submit representations. The appellant did not make representations in the appeal.

RECORD:

At issue are two pages titled “Occurrence Report” and “Supplementary Occurrence Report”. Access has been denied to one line of information near the top of each page, and approximately 14 lines of text. The pages have been printed from a computer.

DISCUSSION:

RESPONSIVENESS:

To be considered responsive to the request, records must “reasonably relate” to the request [Order P-880]. In this appeal, the Ministry states that some of the information in the record is “administrative information relating to the printing of the reports” and is accordingly not responsive to the request. I have reviewed the information at issue, and I agree with the Ministry’s submission. The information in these portions of the record reflect when the record was printed and by whom, and was created after the appellant’s request. I am satisfied that this information is not covered by the scope of the appellant’s request, and I uphold the Ministry’s decision to withhold this information.

PERSONAL INFORMATION/UNJUSTIFIED INVASION OF PERSONAL PRIVACY

I turn to consider the Ministry’s decision to withhold other portions of the record.

The first question I must address here is whether the record contains personal information, and if so, to whom that information relates, for the answer to this question determines which sections of

the *Act* may apply. The section 21 personal privacy exemption applies only to information which qualifies as “personal information”, as defined in section 2(1) of the *Act*. “Personal information” is defined, in part, to mean recorded information about an identifiable individual, including 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 [paragraph (h)].

On my review, I find that the record contains the personal information of the appellant as well as of three other individuals.

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 exceptions to this general right of access.

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

Section 49(b) of the *Act* introduces a balancing principle. The institution 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 institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the institution 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 institution 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.

In this appeal, the Ministry submits that the presumption in section 21(3) applies. That 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 submits that the personal information in the record was compiled and is identifiable as part of an OPP investigation into a possible violation of law. The record documents the investigation undertaken by the OPP in response to an alleged theft incident.

I accept the submissions of the Ministry, and find that the personal information in the record was compiled and is identifiable as part of an OPP investigation into an allegation of theft, an offence under the *Criminal Code*. The application of section 21(3)(b) is not dependent on whether charges are laid as the result of an investigation: see Order P-242. The presumption only requires that there be an investigation into a “possible violation of law”.

As I have found that the presumption in section 21(3)(b) applies, the factors in section 21(2) cannot rebut this presumption [see the Divisional Court decision in *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. I am therefore satisfied that disclosure of the personal information in the record is presumed to constitute an unjustified invasion of the personal privacy of the individuals to whom it relates.

As I have indicated above, section 49(b) gives an institution a discretion to refuse a requester’s own personal information where it determines that the disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy. This discretion may be exercised in favour of disclosure, or in favour of withholding the information. In this appeal, the Ministry has provided submissions on the reasons why it chose to withhold the information. I find no error in its exercise of discretion.

In sum, I uphold the decision of Ministry to withhold the information at issue.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Sherry Liang
Adjudicator

_____ March 17, 2004