

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3053

Appeal PA11-72

Ministry of Community Safety and Correctional Services

February 16, 2012

Summary: The Ministry of Community Safety and Correctional Services received a request under the *Freedom of Information and Protection of Privacy Act* for access to OPP reports concerning the theft of documents. The ministry denied access to portions of the records, citing the mandatory personal privacy exemption under section 21(1). This order partly upholds the ministry's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) definition of personal information, 21(1), 21(3)(b).

OVERVIEW:

[1] The appellant filed a request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for access to the following:

Ontario Provincial Police [OPP] Incident Report [#] re theft of documents from [named company and address] by [named individual].

[2] The ministry located the responsive records and granted partial access to them. Access to some of the information was denied pursuant to sections 14(1)(l) and 14(2)(a) (law enforcement) and 21(1) (personal privacy) of the *Act*. Access to some of the information was also denied as it was non-responsive.

[3] The appellant appealed the decision to this office.

[4] During the course of mediation, the appellant confirmed that he was not seeking access to the portions of the records withheld under section 14(1)(l) and the non-responsive information.

[5] No further mediation was possible and accordingly, this file was moved to adjudication. I sought and received representations from the ministry and the appellant, which were shared in accordance with *Practice Direction 7* of the *IPC Code of Procedure*.

[6] I also sought representations from the persons whose personal information may be contained in the records (the affected persons). Three affected persons consented to the release of their information from the records. As a result, the ministry disclosed further information from the records to the appellant. I did not receive representations from the other affected persons. In its representations, the ministry withdrew its reliance on the section 14(2)(a) law enforcement exemption.

[7] In this order, I uphold the board's decision in part.

RECORDS:

[8] The records remaining at issue consist of an Occurrence Summary, General Occurrence Report and a Supplementary Occurrence Report.

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

B. Does the mandatory personal privacy exemption at section 21(1) apply to the personal information at issue?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[9] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (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;

[10] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

[11] Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

[13] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

[15] The ministry submits that the records contain the personal information of a number of individuals in accordance with paragraphs (a), (b), (d), (e), (g) and (h). It also states that certain portions of the information at issue concern individuals in their business/professional/ official capacity that may reveal something of a personal nature about them.

[16] The appellant did not provide representations as to whether the records contain personal information.

Analysis/Findings

[17] Based upon my review of the records, I agree with the ministry that the information remaining at issue includes the personal information of identifiable individuals other than the appellant. These individuals consist of the accused, the witness and the complainant. This information includes information about their dates of birth, sex, employment history, home address and telephone number, personal opinions or views or the views or opinions of another individual about the individual, as well as their names that appear with other personal information relating to them, in accordance with paragraphs (a), (b), (d), (e), (g) and (h) of the definition of personal information in section 2(1).

[18] Although some of the information in the records is about these individuals in a business capacity, it reveals something of a personal nature about these individuals as it concerns an investigation into these individuals' conduct.¹

[19] However, I find that some of the information remaining at issue in the records which is about individuals in a business capacity does not reveal something of a personal nature about them.² As this information is not personal information, the personal privacy exemption in section 21(1) cannot apply to this information. As no other exemptions have been claimed for this information, I will order it disclosed.

B. Does the mandatory personal privacy exemption at section 21(1) apply to the personal information at issue?

[20] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[21] If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. In the circumstances, it appears that the only exception that could apply is paragraph (f). This section reads:

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.

¹ Orders PO-2225, PO-2524 and PO-2633.

² Orders P-1409, R-980015, PO-2225 and MO-2344.

[22] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f).

[23] If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21. Section 21(4) does not apply in this appeal.

[24] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.)]. In the circumstances, it appears that the presumption at paragraph (b) could apply. This section reads:

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;

[25] The ministry submits that the records document the OPP's involvement with respect to a complaint of theft. The ministry also submits that the information remaining at issue consists of sensitive personal information that was compiled and is identifiable as part of an OPP investigation into a possible violation of law. The ministry submits that the records contain details of the steps undertaken by the OPP to investigate the alleged theft incident. This incident resulted in one individual being charged by the OPP with one count of possession of stolen property. The charge was subsequently withdrawn at court.

[26] The appellant agrees that the records concern an OPP investigation into a possible violation of law.

Analysis/Findings

[27] Remaining at issue is the undisclosed personal information in a police Occurrence Summary, General Occurrence Report and Supplementary Occurrence Report. Based upon my review of the information at issue, I find that it is related to an investigation by the OPP into a possible violation of law concerning a theft of documents from the appellant's place of business. Accordingly, the presumption in section 21(3)(b) applies to the personal information remaining at issue in the records.

[28] Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Orders P-242 and MO-2235]. The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn [Orders MO-2213, PO-1849 and PO-2608].

[29] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2) [*John Doe*, cited above]. Accordingly, I find that the personal information remaining at issue in the records is exempt by reason of the mandatory personal privacy exemption in section 21(1).

ORDER:

1. I order the ministry to disclose to the appellant the highlighted information in the copy of the records provided with this order by **March 22, 2012 and not before March 16, 2012.**
2. I uphold the ministry's decision to withhold the remaining information in the records.
3. In order to verify compliance with provision 1 of this order, I reserve the right to require the ministry to provide me with a copy of the information disclosed to the appellant.

Original signed by: _____
Diane Smith
Adjudicator

February 16, 2012