

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4470

Appeal PA20-00428

Ministry of the Solicitor General

December 20, 2023

Summary: The appellant submitted a request under the *Act* for OPP investigative records relating to a named individual. The ministry located responsive records and denied the appellant access to them. The ministry claimed the records were exempt under the mandatory personal privacy exemption in section 21(1) of the *Act*, among other exemptions. In this order, the adjudicator upholds the ministry's decision, finding that all the records are exempt under section 21(1) of the *Act*. The appeal is dismissed.

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

Orders and Investigation Reports Considered: Order PO-2955.

OVERVIEW:

[1] The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Solicitor General (the ministry) for all investigative records of the Ontario Provincial Police (the OPP) regarding the investigation relating to a named individual. The appellant specifically sought access to the contents of the Crown Brief or the index of the Crown Brief.

[2] The ministry initially sent the appellant an acknowledgement letter informing him that requests for Crown records should be directed to the Ministry of the Attorney General. The ministry also advised the OPP could not locate any information regarding

the named individual without further information about that individual, such as their date of birth, middle name or address. The appellant later clarified his request to include investigative records held by the OPP relating to the individual and provided additional information about them. The ministry located records responsive to the appellant's clarified request and issued an access decision denying him access to the records on the basis of the law enforcement exemption in section 14(1)(l) (facilitate commission of an unlawful act or hamper the control of crime) and the personal privacy exemption in section 21(1) of the *Act*.

[3] The appellant appealed the ministry's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the appellant claimed there should be additional responsive records, specifically records that contain his personal information. The ministry advised the mediator it would not conduct any additional searches unless the appellant confirmed he was interviewed in relation to the named individual's investigation. The appellant stated he was not interviewed in relation to the named individual's investigation.

[5] The ministry confirmed that none of the records contain information relating to the appellant. The ministry also advised the appellant some of the information was withheld as not responsive to his request because it relates to the printing of the records.

[6] The appellant confirmed his interest in obtaining access to all the records.

[7] No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to the file decided to conduct an inquiry into this matter and began by inviting representations from the ministry. The ministry submitted representations.

[8] The appeal was then transferred to me. I decided to seek representations from the appellant in response to the ministry's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant submitted representations.

[9] I note the appellant provided an extensive summary of his history with the Ontario Racing Commission and the Alcohol and Gaming Commission of Ontario. The appellant also made a number of allegations regarding the Ontario Racing Commission's use and disclosure of his personal information to the College of Veterinarians of Ontario. It appears the appellant hopes to use the records at issue to prove there was an inappropriate disclosure of his personal information by the Ontario Racing Commission. I cannot comment on the appellant's allegations and concerns regarding these matters. Furthermore, I confirm that none of the issues the appellant raised in his

representations regarding the Ontario Racing Commission, the Alcohol and Gaming Commission of Ontario or the College of Veterinarians of Ontario are before me. I appreciate the appellant believes these issues are relevant to this appeal; regardless, I confirm the only issue before me is whether the records at issue are exempt from disclosure under the *Act*.

[10] In the discussion that follows, I uphold the ministry's decision to withhold the records under section 21(1) of the *Act*. I dismiss the appeal.

RECORDS:

[11] The eight pages of records consist of OPP reports and one officer's statement.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, whose personal information is it?
- B. Does the mandatory personal privacy exemption at section 21(1) of the *Act* apply to the records?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, whose personal information is it?

[12] In order to decide which sections of the *Act* may apply, the IPC must first decide whether the records contain *personal information* and, if so, to whom it relates. It is important to know whose personal information is in the records. If the records contain the requester's personal information, their access rights are greater than if they do not.¹ Also, if the records contain the personal information of other identifiable individuals, one of the personal privacy exemptions might apply.² The term *personal information* is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[13] To qualify as *personal information*, the information must be about the individual in a personal capacity. Generally, information associated with an individual in a professional, official or business capacity will not be considered to be *about* the

¹ Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning the institution can still choose to disclose the information even if the exemption applies.

² See section 21(1) discussed in Issue B, below.

individual.³ Therefore, the information relating to OPP officers or provided by the officers in their professional capacities (such as their opinions in relation to the investigations that are the subject of the records) is not their personal information.

[14] However, 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.⁴

[15] To qualify as personal information, it must be reasonable to expect an individual will be identified if the information is disclosed.

[16] The ministry submits the records contain personal information within the meaning of section 2(1) of the *Act*. Specifically, the ministry submits the records contain the names, dates of birth, phone numbers and other investigative information relating to identifiable individuals collected by the OPP during a law enforcement investigation. Furthermore, the ministry submits that, due to the subject matter of the records, severing the identifying information of these individuals would likely not serve to remove their personal information from the records. The ministry refers to Order PO-2955, in which the adjudicator found that even if the contact information of identifiable individuals was severed from various occurrence reports and officers' notes, these individuals would still be identified.

[17] The appellant submits the records should contain business records relating to the individual named in his request. As such, the appellant claims the records should not contain that individual's personal information. The appellant notes the individual identified in his request has been deceased for nearly 20 years and this fact should be taken into consideration.

[18] The appellant agrees the records may contain some personal information relating to identifiable individuals other than the individual named in his request and advises that this type of personal information could be redacted because he does not seek access to it.

[19] The appellant also submits the records may contain his own personal information.

[20] I reviewed the records, which consist of OPP reports and an officer's statements. I find all the records contain two identifiable individuals' personal information. One of these individuals, whose personal information is contained in all of the records, was named in the appellant's request. The second individual was also the subject of the OPP's investigation, but their personal information is only contained in pages 1 and 2 of the records. Specifically, I find the records contain recorded information about these

³ See sections 2(3) and (4) of the *Act* and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

identifiable individuals (considered to be *personal information* under the introductory wording of the definition of that term in section 2(1)), their date of birth and sex (paragraph (a)), their criminal or employment history (paragraph (b)), their address and telephone number (paragraph (d)), the views or opinions of other individuals about them (paragraph (g)), and their name where it appears with other personal information relating to them (paragraph (h)). I also agree with the ministry the information in the records would still identify these individuals even if their names and contact information were severed. Therefore, I find the records, as a whole, contain the personal information of two identifiable individuals.

[21] I confirm the records do not contain the appellant's personal information.

[22] I note the appellant submits the individual identified in his request has been deceased for nearly 20 years. However, section 2(2) of the *Act* states "personal information does not include information about an individual who has been dead for more than *thirty* years" [emphasis added]. As this individual has not been deceased for more than 30 years, I find any information relating to them remains their personal information.

[23] Therefore, I find the records contain personal information belonging to two identifiable individuals. I will now consider whether the records are exempt under section 21(1) of the *Act*.

Issue B: Does the mandatory personal privacy exemption at section 21(1) of the *Act* apply to the records?

[24] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions. Section 21(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[25] The sections 21(1)(a) to (e) exceptions are relatively straightforward. If any of those five exceptions exist, the ministry must disclose the information. Neither party raised the application of any of the exceptions in sections 21(1)(a) to (e) and I find none apply.

[26] Under section 21(1)(f), an institution can disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." If disclosure of the personal information at issue would not be an unjustified invasion of personal privacy, the personal information is not exempt from disclosure.

[27] Sections 21(2), (3), and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy. Section 21(3) should generally be considered first. Section 21(3) describes several situations in which disclosing personal information is *presumed* to be an unjustified invasion of personal privacy. If any of the

section 21(3) presumptions are found to apply to the personal information at issue, they cannot be rebutted by the factors in section 21(2) for the purposes of deciding whether the section 21(1) exemption has been established. Furthermore, if one of the presumptions in section 21(3) applies, the personal information at issue cannot be disclosed unless one of the exceptions to the exemption in section 21(4) applies or there is a compelling public interest in the disclosure of the personal information under section 23.

[28] The ministry claims the application of the presumption in section 21(3)(b) of the *Act*. 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[.]

[29] The ministry submits the presumption in section 21(3)(b) applies to all the personal information at issue. The ministry submits the records were created because the OPP was involved in an investigation concerning suspected illegal activities. The ministry notes the IPC has found the presumption in section 21(3)(b) only requires that there be an investigation into a possible violation of law.⁵ The ministry states the London Police Service took over the investigation from the OPP. Regardless, the ministry maintains the records show the OPP conducted an investigation into a possible violation of law involving the individual identified in the appellant's request. Given these circumstances, the ministry submits the records clearly fit within the scope of section 21(3)(b).

[30] The appellant acknowledges the records relate to an investigation into a possible violation of law. However, the appellant submits the disclosure of the records is necessary to address the alleged sharing of information between provincial agencies, such as the Ontario Racing Commission and the College of Veterinarians of Ontario.

[31] I reviewed the records and find the presumption in section 21(3)(b) applies to the personal information at issue. The contents of the records demonstrate there was an OPP investigation into incidents involving the individual identified in the appellant's request. I am satisfied the personal information relating to the individuals identified in the records was compiled and is identifiable as part of investigations into possible violations of law.

[32] I note the appellant's novel interpretation of section 21(3)(b) as applying to the circumstances of his request. In his representations, the appellant claims the circumstances of his request fall within the language in section 21(3)(b) that finds there

⁵ Orders P-242 and MO-2235.

is no presumed unjustified invasion of privacy where “disclosure is necessary to prosecute the violation or continue the investigation.” It appears the appellant feels the disclosure of the personal information is necessary for him to potentially prosecute the alleged disclosure of his personal information. However, the exception language in section 21(3)(b) relates to the possible violation of law that is being investigated, not a separate and unrelated alleged violation. The violation of law alleged by the appellant is not related to the alleged violation of law investigated by the OPP that is summarized in the records. To be clear, the investigation referred to in section 21(3)(b) is the initial one in which the information at issue was compiled.⁶ Therefore, I find the presumption in section 21(3)(b) applies to all the personal information at issue.

[33] The appellant and the ministry identified a number of factors in section 21(2) to consider. However, as stated above, a finding that a presumption in section 21(3) applies to the personal information at issue cannot be rebutted by the factors in section 21(2) for the purposes of deciding whether the section 21(1) exemption has been established. Accordingly, it is not necessary for me to consider whether any of the factors raised by the ministry or the appellant apply to the personal information at issue.

[34] In conclusion, I find that the disclosure of the records would constitute an unjustified invasion of the personal privacy of two identifiable individuals under section 21(1)(f) and it is therefore exempt from disclosure under section 21(1) of the *Act*. Given this finding, it is not necessary for me to consider whether the records are exempt under the law enforcement exemption.

ORDER:

I uphold the ministry’s decision and dismiss the appeal.

Original Signed By: _____

Justine Wai
Adjudicator

December 20, 2023 _____

⁶ Orders PO-2236 and MO-3686.