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

ORDER 12

Appeal 880024

Ministry of Community and Social Services

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O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head under the Act to the Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On February 26, 1988, the Ministry of Community and Social Services (the "institution") received a request from the appellant, as agent for a landlord, for access to the current address of one of the landlord's former tenants.

2. On February 29, 1988, the institution refused to confirm or deny the existence of a record containing the requested information, pursuant to subsection 21(5) of the Act, which

provides that: "a head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy."

3. On March 3, 1988, the requester appealed the decision of the institution. I gave notice of the appeal to the institution.

4. Between March 3, 1988, and April 11, 1988, efforts were made by an Appeals Officer and the parties to settle the appeal. A settlement was not effected as both parties maintained their respective positions.

5. On May 11, 1988, notice that I was conducting an inquiry to review the decision of the head was sent to the institution and the appellant.

6. Written representations were received from the appellant and the institution.

It should be noted, at the outset, that the purposes of the Act as defined in subsection 1(a) and (b) are:

> (a) to provide a right of access to information under the control of institutions in accordance with the principles that, information should be

> available to the public and that necessary exemptions from the right of access should be limited and specific, ..., and
>
> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions...

Further, section 53 of the Act provides that the burden of proof that the record falls within one of the specified exemptions in this Act lies upon the head.

The issues arising in this appeal are as follows:

A. Would disclosure of the requested information (the current address of the former tenant), if it existed in the custody of the institution, constitute an unjustified invasion of personal privacy for the purposes of section 21 of the Act?

B. If the answer to Issue 'A' is in the affirmative, has the head properly exercised his discretion under subsection 21(5) to refuse to confirm or deny the existence of the record?

ISSUE A: Would disclosure of the requested information, (the current address of the former tenant), if it existed in the custody of the institution, constitute an unjustified invasion of personal privacy for the purposes of section 21 of the Act.

Both the appellant and the institution agree that the requested information (the current address of the former tenant) would fall within the definition of personal information under subsection 2(1) of the Act.

The institution submits that, if the requested information does exist, disclosing it would constitute an unjustified invasion of personal privacy.

The institution's position is that names and addresses of individuals are collected by it as part of the administration of social assistance benefits, and, pursuant to subsection 21(3)(c) of the Act, the disclosure of information that "relates to eligibility for social service or welfare benefits or to the determination of benefit levels" is presumed to constitute an unjustified invasion of personal privacy.

The institution further submits, in the alternative, that if it is found that the presumption under subsection 21(3)(c) does not apply, the criteria referred to in subsections 21(2)(f), (h) and (i) exist in this case and support the position that disclosure would constitute an unjustified invasion of personal privacy. These subparagraphs read as follows:

21.-(2)(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Finally, the institution points out that section 23 of the Act reinforces the importance of protecting the privacy of individuals, by restricting the override provisions applicable to section 21 to situations where a "compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption."

The appellant, on the other hand, argues that the record should be released because "...the disclosure does not constitute an unjustified invasion of personal privacy" (subsection 21(1)(f)).

The appellant contends that the requirements for the presumption under subsection 21(3)(c) of the Act have not been met in this case because, in his view, if the institution has it, the current address of the former tenant "does not relate to eligibility for social service or welfare benefits nor to the determination of benefit levels." The appellant submits that

the fact the institution may possess the address of the former tenant does not in itself trigger a presumption that the tenant had applied for or was in receipt of social assistance benefits.

In addition to not being a **presumed** unjustified invasion of personal privacy under subsection 21(3)(c), the appellant also submits that to disclose the record in question would not be an unjustified invasion of personal privacy at all. The appellant identifies subsections 21(2)(d) of the Act as a relevant circumstance a head must consider in determining whether disclosure of personal information constitutes an unjustified invasion of personal privacy. The subparagraph reads as follows:

> 21.-(2)(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

The appellant submits that subsection 21(2)(d) is relevant in this case, because the landlord requires the address of the former tenant in order to personally serve a Statement of Claim.

After considering the submissions of both parties, I find that the requirements for a **presumed** invasion of personal privacy under subsection 21(3)(c) do not exist. I agree with the appellant's position that the information in question, without more, does not relate to eligibility for social service or welfare benefits or the determination of benefit levels, and as such does not meet the test of subsection 21(3)(c). However, I find that the release of the information in question, if it does exist, would result in an unjustified invasion of privacy. I accept the institution's arguments that the information in question falls under subsection 21(1)(h), in that it contains personal information that, if present within the institution, would have been supplied in confidence.

If the institution has the information, it could have been supplied as part of the application process for social assistance benefits. An application form used for this purpose includes a place for an applicant to sign acknowledging that the form will be used for certain specific purposes. It is my view that, by implication, this information should not be used for other, unauthorized purposes.

In the circumstances of this case, I accept the institution's

argument, concerning subsection 21(2)(f), that the former tenant's address, if it exists in the institution, qualifies as "highly sensitive" personal information. This is due to the fact that the appellant intends to use the information to physically contact the former tenant, in this case to have her personally served with a Statement of Claim. One of the meanings of "sensitive" in the Concise Oxford Dictionary is: "...(of topic etc.) subject to restriction of discussion because of embarrassment, to ensure security, etc.".

A person's physical security **could** be violated if information, such as an address, were to be released. That is not **necessarily** the result of disclosure, without more being known, of any of the other types of personal information defined in the Act.

I am, however, unable to accept the institution's submission that knowledge of the fact the institution **may** have the former tenant's address could unfairly damage her reputation (subsection 21(2)(i)). This submission was not argued in detail, but presumably the institution felt that the knowledge that an application for social assistance had been made could, in itself, somehow damage the former tenant's reputation. Since I have already found that the release of an address in the

circumstances of this case is an unjustified invasion of personal privacy, I do not find it necessary to deal with this argument.

With respect to the appellant's submissions regarding subsection 21(2)(d), I have concluded that, although the information in question **may** be relevant to a fair determination of the landlord's rights, this is not sufficient to outweigh the obligation to protect the former tenant's privacy.

I agree with the institution's position that section 23 bolsters the privacy protection portion of the Act in this instance. It provides that an exemption from disclosure of a record under section 21 does not apply where a "compelling public interest" in the disclosure of the record outweighs the purpose of the exemption. It is noted that section 23 does not refer to a 'private' interest such as that of the appellant's client, and it also requires that the public interest be a 'compelling' one. In my view, the appellant's interest fails on both counts; it is neither compelling nor a public interest.

In summary, I am satisfied that the institution correctly and properly decided that disclosure of the record, if it existed,

would constitute an unjustified invasion of privacy. Issue 'A' is therefore decided in the affirmative.

ISSUE B: If the answer to Issue 'A' is in the affirmative, has the head properly exercised his discretion under subsection 21(5) to refuse to confirm or deny the existence of the record?

Because I have found that the disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy, I must now decide whether the head properly exercised his discretion under subsection 21(5) to refuse to confirm or deny the existence of the record.

Subsection 21(5) reads as follows:

> (5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

On the plain reading of subsection 21(5), the head has discretion to refuse to confirm or deny the existence of a

record, if it has been established that disclosure of the record would constitute an unjustified invasion of personal privacy.

In dealing with Issue 'A', I have supported the head's decision that disclosure of the record, if it existed, would be an unjustified invasion of personal privacy.

The discretion under subsection 21(5) rests with the applicable head in each case, and as long as this discretion has been exercised reasonably, in my view, it should not be disturbed on appeal. In this case, there is no evidence of unreasonableness on the part of the head in the exercise of his discretion.

In conclusion, my Order is that the head's decision to refuse to confirm or deny the existence of a record be upheld.

Original signed by: August 3, 1988
Sidney B. Linden Date
Commissioner