



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

ORDER 74

Appeal 880253

Ministry of Health



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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, (the "Act"), which gives a person who has made a request for access to a record under subsection 24(1) of the Act a right to appeal any decision of a head under the Act to the Information and Privacy Commissioner.

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

1. On August 15, 1987, the Ministry of Health ("the institution") received a request for the following information:
 - (a) a complete copy of all memos, letters, Reports, Notations, correspondence, and any other items on file with the Dept. of Health in reference to myself;
 - (b) a complete and detailed list of any items not being granted to me via a) above -- advising me of the date, who to and who from, and the content material contained therein;
 - (c) the cost of obtaining the above material via (a) above.

2. The requester subsequently clarified his request in May, 1988, by indicating that "the area I am interested in is any records relating to my being transferred here to Ontario... I was transferred here in reference to a Lieutenant Governor's warrant and there was correspondence which might date back to 1975 and go to date."

3. On July 28, 1988, the institution responded, agreeing to provide partial access to the requested records, and claiming exemption for other parts under subsections 14(1)(a), 14(2)(d), 15(a), 19, 20, 49(b) and 65(2) of the Act.
4. On August 4, 1988, the requester appealed the institution's decision, and I gave notice of the appeal to the institution.
5. In his letter of appeal, the appellant did not indicate his reasons for appealing the decision of the institution. However, he did submit that "the s. 65(2) exemptions should not be part of the appeal."
6. The records at issue were obtained and reviewed by an Appeals Officer from my staff. The Appeals Officer also spoke to an official from the institution to determine which words, sentences or paragraphs had been severed from the partially exempted records.
7. Efforts to mediate a settlement in the appeal were unsuccessful.
8. By letter dated December 22, 1988, I notified the institution and the appellant that I was conducting an inquiry into this matter. Enclosed with this letter was a copy of a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal, and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties,

to be relevant to the appeal. The Appeals Officer's Report indicates that the parties, in making representations to the Commissioner, need not limit themselves to the questions set out in the Report.

9. During the course of the inquiry, the institution became aware that a substantial number of the records which had been exempt under sections 14 and 15 of the Act had already been disclosed to the appellant at a hearing before the Ontario Lieutenant Governor's Board of Review. Therefore, these records were disclosed to the appellant by the institution on January 30, 1989. On February 20, 1989, the institution also released one additional record to the appellant.
10. The remaining records which are the subject of this Order are two letters, referred to by the institution as Records 6 and 10. The institution has relied on subsection 49(b) and section 20 of the Act as the basis for denying access to certain portions of these records.
11. I have received representations from the institution and have considered them in making my order. No further submissions were received from the appellant.

The issues arising in this appeal are as follows:

- A. Whether any part of either of the records containing personal information about the appellant fall within the exemption provided by subsection 49(b) of the Act
- B. Whether any part of either record is properly subject to exemption under section 20 of the Act.

It should be noted at the outset that the purposes of the Act as defined in subsections 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,
 - (i) information should be available to the public,
 - (ii) 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 and to provide individuals with a right of access to that information.

Further, section 53 of the Act provides that where a head refuses access to a record or a part thereof, the burden of proof that the record or part falls within one of the specified exemptions in the Act lies upon the head.

ISSUE A: Whether any part of either of the records containing personal information about the appellant falls within the exemption provided by subsection 49(b) of the Act.

The two records at issue in this appeal are letters, dated February 27, 1980 and March 20, 1980 which were written by an officials of the institution in response to letters from a member of the public.

Having reviewed these records, in my view, they both clearly contain personal information about the appellant, as defined in

subsection 2 of the Act. The issue for me to determine is whether the records should be withheld from disclosure under subsection 49(b) of the Act.

Subsection 49(b) reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

...

(b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

Subsection 49(b) requires the institution to balance two competing interests. The head must look at the information contained in the records and weigh the requester's right of access to his own personal information against another individual's right to the protection of his or her personal privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then subsection 49(b) gives him the discretion to deny access to the personal information of the requester.

Subsections 21(2) and (3) of the Act provide guidance in determining if disclosure of personal information would constitute an unjustified invasion of personal privacy. Subsection 21(2) sets out some criteria to be considered by the head:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (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.

The subparagraphs of subsection 21(3) of the Act go on to describe a number of types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

Having examined the contents of the two records at issue in this appeal, and having considered the representation made by the institution, in my view, disclosure of any identifying information relating to individuals other than the appellant and officials of the institution would constitute an unjustified

invasion of these individuals' personal privacy. The names, addresses and all other identifying information of these individuals contained in the two letters is properly exempt from disclosure under subsection 49(b) of the Act.

The remaining portions of these records contain information relating only to the appellant and/or the institution, and are not subject to this exemption.

ISSUE B: Whether any part of either record is properly subject to exemption under section 20 of the Act.

I have decided under Issue A that the personal information relating to individuals other than the appellant and officials of the institution should be severed from the two letters under subsection 49(b) of the Act. Therefore, my discussion of Issue B is restricted to the proper application of section 20 to the remaining portion of these records.

Section 20 of the Act reads as follows:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The head has raised the section 20 exemption but has offered insufficient evidence to support his position that disclosure of the record could reasonably be expected to seriously threaten the safety or health of the officials of the institution who wrote the letters.

I have reviewed the contents of these two letters and, in my view, they do not contain information which would trigger the application of the section 20 exemption.

In summary, I order the head to sever those parts of the two records containing identifying information relating to individuals other than the appellant and the officials of the institution, and to disclose the remaining parts of these records to the appellant within twenty (20) days of the date of this order. The institution is further ordered to advise me in writing, within five (5) days of the date of disclosure, of the date on which disclosure was made.

Original signed by: _____
Sidney B. Linden
Commissioner

July 11, 1989
_____ Date