



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER 14**

## **Appeal 880002**

### **Ministry of Community and Social Services**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

**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) 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 January 7, 1988 the Ministry of Community and Social Services (the "institution") received a request from the appellant for access to her personal file, specifically that portion relating to the estate of her late brother and the identity of the party who supplied this information to the institution.
2. On January 22, 1988 the institution denied access to the file in accordance with subsections 14(1)(d), 21(2)(h) and 21(3)(b) of the Act. Later, the institution added subsections 49(a) and (b) as a basis for denial.
3. On January 29, 1988 the requester appealed the denial of access to her file. I gave notice of the appeal to the institution.

4. Between January 29, 1988 and May 4, 1988 efforts were made by an Appeals Officer and the parties to settle the appeal. In an attempt to effect a settlement, the institution offered to provide the appellant with access to her file excluding only those records which affected the interests of

a third party. The appellant declined the institution's offer and said that her only interest in the file was to determine the identity of the party who supplied what the appellant felt was misleading information to the institution. Both parties requested that the matter be resolved by an inquiry.

5. On May 4, 1988 I gave notice to the institution and the appellant that I was conducting an inquiry to review the decision of the head.

6. On June 10, 1988 both parties were invited to provide written submissions. By letter of the same date, I notified the third party of the inquiry and invited representations pursuant to subsection 52(13) of the Act.

7. Written representations were received from the appellant, the institution and the third party.

It should be noted at the outset the purposes of the Act as defined in section 1.

Subsection 1(a) provides 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 rights of access should be limited and specific.

Subsection 1(b) defines the counter\_balancing privacy purpose of the Act. That subsection provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide individuals with a right of access to their own personal information.

It should also be noted that section 53 of the Act provides that the burden of proof that the record or part of the record falls within one of the specified exemptions in this Act lies upon the head.

The institution submits that it received information from a third party with respect to the appellant's claim for family benefits. On confirming this information, the institution terminated the appellant's benefits. The appellant asked that this decision be reviewed by the Social Assistance Review Board. To my knowledge the judgment of that Board has not been released, as of the date of this Order.

As indicated above, the institution has agreed to partial disclosure of the information contained in the file requested by the appellant. In its representations, the institution gave reasons for its refusal to disclose three items in the file. Given the nature of the appeal, it is not possible for me to identify the particulars of these items.

The institution also makes reference to a fourth item which apparently was overlooked when the records in question were

initially submitted for consideration in this appeal. This is an internal Ministry document entitled "Family Court Appointments" for July 13, 1983. Because this document does not pertain to the subject of the request, namely, any records in the appellant's file relating to the estate of her late brother, it is not in issue in this appeal. Accordingly, I make no determination with regard to this document.

The issues arising in this appeal are as follows:

- A. Whether disclosure of the records in question would constitute an unjustified invasion of another person's personal privacy, and thereby fall within the exemption under subsection 49(b).
- B. If the answer to Issue A is in the affirmative, whether the records in issue might reasonably be severed pursuant to subsection 10(2) of the Act.

**ISSUE A: Whether disclosure of the records in question would constitute an unjustified invasion of another person's personal privacy, and thereby fall within the exemption under subsection 49(b).**

The institution submits that disclosure of the record to the appellant would constitute an unjustified invasion of another individual's personal privacy pursuant to 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, ...where the disclosure would constitute an unjustified invasion of another individual's personal privacy."

In order to fit within the subsection 49(b) exemption, two tests must be met: the record must contain "personal information" and the disclosure of this information must constitute "an unjustified invasion of another individual's personal privacy".

Subsection 2(1) of the Act provides a definition for the term "personal information". It reads:

"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 where 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".

It is clear from the wording of the statute that this list is not exhaustive. On reviewing the records which are the subject matter of this appeal, I find that the information contained in them falls within the definition of "personal information".

In determining whether or not disclosure of this information would constitute an unjustified invasion of another individual's personal privacy, a head must consider all relevant circumstances and need not be restricted to the specific criteria in the Act.

In this case, after considering the nature of the personal information and the manner in which the information was received by the institution, I find that disclosure of the records in question would constitute an unjustified invasion of the personal privacy of the third party.

The records in question contain personal information concerning the third party, which was provided to the institution in confidence. In the circumstances of this case, the head was confronted with two competing rights, namely the right of access to information balanced with the right to privacy of a third party. Subsection 49(b) allows the head to exercise discretion in determining if the records in issue should be disclosed and in this case such discretion was exercised in favour of non\_disclosure. In the circumstances of this particular case, the appellant has not presented arguments sufficient to outweigh

the third party's right to privacy protection, and I support the head's decision to deny disclosure under subsection 49(b).

As I have found that the head has properly exercised his discretion pursuant to 49(b) of the Act, it is unnecessary for me to undertake an examination of the other exemptions relied upon by the institution, namely subsections 14(1)(d), 21(2)(h), 21(3)(b) and 49(a).

**ISSUE B: If the answer to Issue A is in the affirmative, whether the records in issue might reasonably be severed pursuant to subsection 10(2) of the Act.**

Subsection 10(2) of the Act addresses the severability of a record. That subsection reads:

"Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions."

After reviewing the three items in issue, I see no reasonable way to make any severances which would effectively prevent the disclosure of information which should be exempted.

For the reasons stated above, my order is that the decision of the head to refuse to disclose the records in issue in this appeal is upheld.

Original signed by: \_\_\_\_\_  
Sidney B. Linden

August 25, 1988  
Date



Commissioner