



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

ORDER P-289

Appeal P-910422

Ministry of Correctional 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/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

O R D E R

BACKGROUND:

The Ministry of Correctional Services (the "institution") received a request for information regarding the accidental release of a named inmate from the Windsor Jail. The institution denied access to all responsive records in their entirety, pursuant to section 21 of the Freedom of Information and Protection of Privacy Act (the "Act"). The requester appealed the institution's decision to this office.

The Appeals Officer was unsuccessful in her attempts to locate the former inmate named in the records.

Because mediation was not possible, the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the decision of the head was sent to the appellant and the institution. Enclosed with the Notice of Inquiry was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. Representations were received from the appellant and the institution. Although the institution's representations refer to section 14(2)(d) of the Act, the institution has clarified that it is not relying on this section to exempt information contained in the records.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.

Section 2(1) of the Act states in part:

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

...

(c) any identifying number, symbol or other particular assigned to the individual,

...

(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;

The records are three occurrence reports regarding the accidental release of the named inmate. I have reviewed the contents of these records and, in my view, they contain the personal information of the named former inmate. The records do

not contain the personal information of employees of the institution.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

Section 21(1) of the Act prohibits the disclosure of personal information except in certain circumstances. One such circumstance is contained in section 21(1)(f) of the Act, which states:

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.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy.

The institution has specifically relied on section 21(3)(b) of the Act.

Section 21(3)(b) reads as follows:

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;

The institution claims that "the record could have formed part of an investigation into a possible violation of law". I have been provided with no evidence to indicate that the records are identifiable as part of an investigation into a possible violation of law. (emphasis added) Moreover, in my view, the records recount an administrative error made by the institution, not a possible violation of law by the former inmate. Accordingly, I find that the records do not satisfy the requirements for a presumed unjustified invasion of personal privacy under section 21(3) (b) of the Act.

I will now consider whether section 21(2) provides support for the institution's position.

The appellant submits that section 21(2) (b) is a relevant consideration, and the institution raises the possible application of section 21(2) (i).

Sections 21(2) (b) and (i) state:

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,

- (b) access to the personal information may promote public health and safety;

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

In support of his position regarding section 21(2)(b), the appellant submits that disclosure of the records would promote public safety. He states that "surely the citizens should be able to know why somebody is released by mistake from a jail".

The institution submits that section 21(2)(b) is not a relevant consideration, stating:

Since the information contained in the record and/or the early release of the offender did not pose a threat to public health and safety, similarly, the release of the record would not promote public health and safety.

I do not agree with the institution's position. The records document the circumstances surrounding the inadvertent release of

a person who had been lawfully detained in custody. I find that section 21(2)(b) is a relevant consideration in the circumstances of this appeal.

Turning to section 21(2)(i), the institution submits that disclosure of the records could unfairly damage the reputation of the former inmate and other individuals named in the records. The institution states that "disclosure of the record could result in the offender being labelled as an escapee or high risk/dangerous person", and "could lead to allegations of mismanagement or lack of judgement" about the employees of the institution named in the records.

In my discussion of Issue A, I determined that the records contained the personal information of the former inmate, but not the employees of the institution. While the employees of the institution are referred to in the records, the records do not contain their personal information, and, therefore, any potential damage to the reputations of the employees is not a relevant consideration in the circumstances of this appeal.

In his letter of appeal and in his representations, the appellant states that he is not requesting access to the personal information of the former inmate. Although I find that section 21(2)(i) is a relevant consideration with respect to the former inmate, in my view, severing his name and institution number from the records would adequately protect his reputation from being unfairly damaged.

Therefore, I find that disclosure of the records, with the name and institution number of the inmate severed, would not constitute an unjustified invasion of the personal privacy of the former inmate, and the unsevered parts of these records do not qualify for exemption under section 21 of the Act.

ORDER:

1. I order the institution to disclose the records to the appellant, subject to the severances of the name and institution number of the named individual.
2. I also order that the institution not make this disclosure until thirty (30) days following the date of the issuance of this Order. This time delay is necessary to give any

party to the appeal sufficient opportunity to apply for judicial review of my decision before the records are actually disclosed. Provided that notice of an application for judicial review has not been served on the Information and Privacy Commissioner/ Ontario and/or the institution within this thirty (30) day period, I order that the unsevered parts of the records be disclosed within thirty-five (35) days of the date of this Order.

3. The institution is ordered to advise me in writing within five (5) days of the date on which disclosure was made. Any notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

4. In order to verify compliance with the provisions of this Order, I order the head to provide me with a copy of the records which are disclosed to the appellant pursuant to provision 1, upon my request.

Original signed by:
Tom Mitchinson
Assistant Commissioner

April 14, 1992