



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

ORDER P-216

Appeal 900187

Ministry of Health



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O R D E R

INTRODUCTION:

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, as amended (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 Information and Privacy Commissioner.

On January 5, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

On April 16, 1990, the appellant wrote to the Ministry of Health (the "institution") requesting a copy of the request made by another person (the "original requester") to the institution. The original requester had requested information concerning the appellant in this appeal. On April 19, 1990, the institution responded to the appellant's request for the original requester's request letter as follows:

As you are aware, the information you are requesting is personal information regarding the requester and under Section 21, personal privacy, of the Freedom of Information and Protection of Privacy Act, 1987, this cannot be disclosed to any other person other than the individual to whom the information relates. Therefore, we will not be opening a file under the Act.

On April 26, 1990, the appellant appealed the decision of the head. By letter dated May 15, 1990, the institution again wrote to the appellant, granting partial access to the request letter:

A copy of the record is enclosed.

Some of the material requested has been severed from the record under the authority of subsection 21(1), personal privacy of the Act. Where material has been severed the legal authority is noted in the margin next to the information removed....

The information severed represents the name and address of the requester. This information is personal as defined by the Act and as Section 21 is a mandatory exemption, severances have been made. In addition, the Ministry has consulted with the affected party who has also cited a Section 21 exemption.

The appellant also appealed this decision of the head by letter dated July 6, 1990. Notice of the appeal was sent to the appellant, the institution and the original requester.

The requested record was obtained and reviewed by the Appeals Officer assigned to the case. In an effort to mediate a settlement, the Appeals Officer contacted the appellant, the institution and the original requester who was resisting disclosure. However, the parties maintained their respective positions, and settlement was not effected. Accordingly, the matter proceeded to inquiry.

On October 1, 1990, notice was sent to the appellant, the institution and the original requester, that an inquiry was

being conducted to review the decision of the head. Enclosed with the notice was a report prepared by the Appeals Officer. This report was prepared in order 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 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 their representations, need not limit themselves to the questions set out in the report.

Written representations were received from the appellant, the institution and the original requester and I have considered all of the representations in making my Order.

The record in issue is a letter written by the original requester to the institution, requesting information concerning the appellant. The institution granted partial access to the letter, but severed the name, address and position of the writer. In his representations, the appellant stated that he was limiting his appeal to the name, title, if any, and name of the original requester's agent, if any. Since there is no agent, this information is not in issue.

PURPOSES OF THE ACT/BURDEN OF PROOF:

It should be noted at the outset that one of the purposes of the Act as set out in subsection 1(a) is to provide a right of access to information under the control of the 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. Subsection 1(b) sets out the counter-balancing privacy protection purpose of the Act. This 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 the right of access to do their own personal information.

Further, 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 the Act lies with the head.

The issues arising in this appeal are as follows:

- A. Whether the information contained in the record qualifies as "personal information", as defined in subsection 2(1) of the Act.
- B. If the answer to Issue A is in the affirmative, whether the disclosure of the name and title of the original requester would constitute an unjustified invasion of his or her personal privacy under section 21 of the Act.

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

In all cases where the request involves access to personal information, it is my responsibility, before deciding whether the exemption claimed by the institution applies, to ensure that the information in question falls within the definition of

"personal information" in subsection 2(1) and to determine whether it relates to the appellant, another individual or both.

Subsection 2(1) of the Act provides as follows:

In this Act,

...

"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;

In Order 27 (Appeal Number 880059), dated November 2, 1988, former Commissioner Sidney B. Linden stated that while a name alone cannot be considered personal information, where a name appears in the context of a request for access to information under the Act disclosure of the name would reveal both (a) the fact that an identifiable individual made a request under the Act, and (b) the nature of the request. The Commissioner found that this rendered the name of the requester "personal information" as defined in the Act.

I concur with Commissioner Linden's interpretation, and adopt it in this appeal. I should note that the appellant does not dispute the fact that the name of the original requester is personal information. Respecting the title or position of the original requester, I find that this also is personal information since it appears in the context of a request for access, and is information about an identifiable individual.

ISSUE B: If the answer to Issue A is in the affirmative, whether disclosure of the name and title of the original requester would constitute an unjustified invasion of his or her personal privacy under section 21 of the Act.

In Issue A I found that the name and title of the original requester qualifies as "personal information" about the original requester. I must now determine whether the disclosure of the name and title of the original requester would constitute an unjustified invasion of that person's personal privacy.

The Freedom of Information and Protection of Privacy Act, 1987, as amended, does not provide explicitly for the disclosure of the name of a requester where the requester has requested access to information concerning another individual or entity. In Order 27, supra, Commissioner Linden stated that the fact that the Act is silent as to whether the name of a requester may be disclosed should not be interpreted as a prohibition. He found that the Act does not specifically or impliedly impose a general rule of non-disclosure of the names of requesters. He suggested that the fairest approach in adjudicating the issue would be to weigh any competing rights of the requester and any other parties. I concur with Commissioner Linden's position, and adopt it for the purposes of this appeal.

Subsection 21(1)(f) of the Act permits the head to disclose personal information to a person other than the person to whom the information relates if the disclosure does not constitute an unjustified invasion of personal privacy.

Subsection 21(3) lists types of information the disclosure of which would raise a presumption of an unjustified invasion of personal privacy. Subsection 21(3) provides as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) 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;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

The institution argues that the disclosure of the name and title of the original requester would be a presumed unjustified invasion of the original requester's personal privacy under subsection 21(3)(d) of the Act as "the personal information relates to employment or education history." By this the institution means that the original requester's position and place of work would be disclosed if his or her name were disclosed and this "falls within the purview of 'employment history'". I do not accept the institution's argument. I am of the view that a person's name and professional title, without more, would not constitute "employment history" within the meaning of subsection 21(3)(d). The information at issue does not conform to any of the other types of information listed in subsection 21(3). I find, therefore, that no presumption of an unjustified invasion of the personal privacy of the original requester exists.

Subsection 21(2) lists various criteria which must be considered in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy within the meaning of subsection 21(1)(f).

Subsection 21(2) provides as follows:

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.

In its representations, the institution submits that the original requester's name and title were supplied in confidence, and therefore the criterion contained in subsection 21(1)(h) applies to the information. It argues that the confidentiality of the personal information is indicated by the fact that the original requester, when contacted by the institution, requested that his or her name and title be deleted from the request.

I have reviewed the original requester's letter and can find therein no request that his or her letter be kept confidential. In my view, a request for anonymity made after the request for access does not in and of itself, fully address the issue of the confidentiality of the request for access to information. It is merely one of the factors to be considered in coming to a decision in this matter. The original requester has not addressed this issue in his or her representations to me, although it is clear that he or she does not wish his or her identity to be disclosed at this time.

In referring to subsection 21(2)(e), the institution submits that disclosure of the original requester's name would expose the requester to pecuniary or other harm. Because the nature of the institution's evidence and that of the original requester in support of the application of subsection 21(2)(e) might serve to identify the original requester, I am unable to set it out in any detail. However, in the absence of further evidence, I am not prepared to accept the institution's contention that the original requester, if identified, would be exposed unfairly to the harm specified by the institution. As indicated, the original requester has also made representations respecting the possibility that should his or her identity be disclosed, he or she would be exposed unfairly to harm.

In Order 27, supra, Commissioner Linden remarked that

... an individual requester must appreciate that where others have an interest in the issue of whether the record may be disclosed (whether it be a personal or

an economic interest) they will often want to know the name of the requester.

The original requester has requested access to personal information about the appellant, in terms which demonstrate a certain amount of prior knowledge of the appellant's personal affairs. The appellant is concerned that there has been a prior improper disclosure of his personal information, to a person whose identity is unknown to him. He submits:

... my concern over the original request [is heightened] since the requester's original letter named me specifically and dates. I believe that a breach of privacy has occurred by this individual having my name, dates, and [location].

Since the information requested by the original requester is the personal information of the appellant, it is my view that the appellant has an interest in knowing the identity of the original requester. This is not an interest which is specifically addressed in the Freedom of Information and Protection of Privacy Act, 1987, as amended. The original requester has a competing interest in maintaining his or her anonymity, because he or she fears that certain consequences may follow his or her identification.

The institution also argues that subsection 21(2)(f) applies, claiming that the information is highly sensitive since it would disclose the name of the original requester to the appellant, who is known to him. In the circumstances, I am not satisfied that the name of the original requester is highly sensitive.

I have considered all of the circumstances arising in this appeal, and find that, on balance, the disclosure of the name

and title of the original requester would not be an unjustified invasion of his or her personal privacy. In coming to this conclusion, I am mindful of the fact that while the original requester has an interest in maintaining his or her anonymity, the request which he or she made was for sensitive personal information about the appellant, in a letter which showed prior knowledge of the appellant's personal affairs. In such circumstances, it is my view that the appellant's interest in knowing who it was that had sufficient knowledge about him to make the specific request for his sensitive personal information outweighs the original requester's interest in maintaining his or her anonymity.

Although I have found that disclosure of the name of the requester in the circumstances of this appeal would not constitute an unjustified invasion of personal privacy, my conclusion should not be taken as an indication that names of requesters should be routinely disclosed. Each request for such information must be evaluated on its own merits with decisions on disclosure made on a case by case basis.

ORDER:

1. I order the head to disclose the name and title of the original requester to the appellant. I also order the head not to disclose the information to the appellant until thirty (30) days following the date 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 record is actually disclosed. Provided 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 information be disclosed within thirty-five (35) days of the date of this Order.

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

Original signed by:
Tom A. Wright
Assistant Commissioner

January 28, 1991
Date