



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

ORDER P-292

Appeal P-910471

Archives of Ontario



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O R D E R

BACKGROUND:

A request was made to the Ministry of Health for access to: "The contents of the Health Discipline Board's file (Re: [the requester]) on which the Board ... made their negative 'decision & reasons' response of Feb 9, 1983".

The request was transferred to the Archives of Ontario (the "institution"), pursuant to section 25 of the Freedom of Information and Protection of Privacy Act (the "Act"), and the requester was notified.

The requester was granted access to 90 records in their entirety, and partial access to 11 addition records, with severances pursuant to section 49(b) of the Act.

The requester appealed the institution's decision to this office.

During the course of mediation, the scope of the appeal was narrowed to only one severed paragraph of a letter dated June 7, 1982, written by a doctor (the "affected person") to the College of Physicians and Surgeons in the context of the Health Discipline Board's review involving the appellant. Settlement of the appeal was not possible because the appellant held to his view that this paragraph contained his personal information because of the fact that the letter was written in reference to him, and the affected person refused to consent to disclosure of the severed information.

Because further mediation was not possible, the matter proceed to inquiry. Notice that an inquiry was being conducted to review the decision of the head was sent to the appellant, the institution and the affected person, inviting representations concerning the subject matter of the appeal. Written representations were received from the institution and the appellant.

ISSUES:

- A. Whether the information contained in the severed paragraph of the record qualifies as personal information as defined under section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether disclosure of the severed paragraph of the record would constitute an unjustified invasion of personal privacy.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the severed paragraph of the record qualifies as personal information as defined under section 2(1) of the Act.

The definition of "personal information" found in section 2(1) of the Act states in part:

"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,

...

I have examined the severed paragraph of the record and, in my view, it contains the personal information of the affected person, but not the appellant. The information contained in the paragraph relates exclusively to the personal affairs of the affected person, and has no connection to the portions of the record which relate to the professional relationship between the affected person and the appellant.

ISSUE B: If the answer to Issue A is yes, whether disclosure of the severed paragraph of the record would constitute an unjustified invasion of personal privacy.

During the course of this appeal, the institution withdrew its exemption claim under section 49(b), and indicated that it was relying instead on section 21(1) of the Act as the basis for denying access to the severed paragraph of the record.

Once it has been determined that a record contains personal information, section 21 of the Act prohibits disclosure of the personal information, except in certain circumstances. One such circumstance is contained in section 21(1)(f), which reads:

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 would constitute an unjustified invasion of personal privacy. Section 21(3) was not relied on by the institution, and I find that the provisions of this section are not relevant in the circumstances of this appeal.

Section 21(2) provides a non-exhaustive list of criteria for the head to consider in making a determination regarding disclosure. The institution cites sections 21(2)(f) and (h) as the basis for refusing to disclose the record. These sections 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.

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

In his representation, the appellant states:

"... since Dr. [affected person] attested her Medical Practitioner's Certificate December 7, 1964, without interviewing [the appellant], and made statements therein deemed perjurious if made under oath, Dr. [affected person] is thereby not entitled to the further protection that Mr. Wilson's [Archivist] severance affords. ... I do conscientiously believe that Mr. Wilson, Archivist, has grievously erred in impeding the writer from attaining his goal of having this unlawful and fraudulent Certification of the writer expunged from the record".

The institution submits that:

"Dr. [affected person] would have reasonably expected that a letter responding to a complaint investigated by the Ontario College of Physicians and Surgeons would be treated in confidence, and particularly her personal information ...".

Although the affected person did not provide formal written representations, in conversations with the Appeals Officer during the course of the appeal, she indicated that the appellant had been persistent over a long period of time in accusing her of wrongfully certifying him for admission as a patient, and that the appellant is interested in obtaining information about her that could be used to harass her. In the affected person's view, the nature of the overall situation is such that the release of any information personal to her would constitute an unjustified invasion of her privacy.

I have carefully reviewed the contents of the severed paragraph, the representations received by the parties, and the comments attributed to the affected person, and, in my view, the requirements for exemption under section 21(1) of the Act have not been satisfied.

It is important to recognize that the Act does not provide an absolute exemption for the release of personal information to someone other than the individual to whom the information relates. Rather, it permits disclosure if doing so would not constitute an unjustified invasion of the individual's personal privacy.

In the circumstances of this appeal, the appellant has been provided with access to all portions of a letter written by the

affected person to the College of Physicians and Surgeons, with the exception of one 3-line paragraph. Although this paragraph is clearly unrelated to the topics being discussed in the rest of the letter, that in and of itself is not sufficient to protect the information from disclosure. If it is determined that disclosure would not constitute an unjustified invasion of the affected person's personal privacy, then the information is releasable.

I have reviewed the various provisions of sections 21(2) and (3) of the Act and am unable to conclude that the information contained in the severed paragraph fits within the type of information intended to be protected by section 21. In my view, the information cannot be accurately characterized as highly sensitive, and, although the letter itself may have been submitted with an expectation of confidentiality, it has subsequently been released to the appellant, and based on the evidence before me, I am unable to conclude that the contents of the severed paragraph are in and of themselves the type of information which would have been provided in confidence.

In conclusion, I find that the disclosure of the severed paragraph would not constitute an unjustified invasion of the personal

privacy of the affected person, and I order it to be released to the appellant.

ORDER:

1. I order the institution to disclose the severed paragraph of the record to the appellant.

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 record is 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 severed paragraph 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. This 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 record which is disclosed to the appellant pursuant to provision 1, upon my request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ April 22, 1992