



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

ORDER P-360

Appeal P-911109

Ministry of Community and Social Services



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ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act (the Act) and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Ministry of Community and Social Services (the Ministry) received a request under the Act for access to records relating to an allegation of harassment. The requester subsequently clarified that she was requesting access to any notes, memos or reports which interpret her complaints and any summaries of her descriptions of the actions on which her complaints were based.

The Ministry identified three records as responsive to her request. The Ministry notified three individuals named in the records of the request, and asked them for their views regarding disclosure of the records. The three individuals did not consent to disclosure, and the Ministry informed the requester that access to the records was denied under section 49(b) of the Act, because disclosure would constitute an unjustified invasion of another individual's personal privacy.

The requester appealed the Ministry's decision. A mediated settlement was not possible, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry, the appellant and the three individuals notified of the request by the Ministry. Written representations were received from the Ministry, the appellant and two of the individuals named in the records.

ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the 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 discretionary exemption provided by section 49(b) applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the 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, ...".

Record 1 consists of an account of a preliminary interview with the appellant during which the appellant clarified the incidents in which she believed she had been harassed. Record 2 consists of a summary of material collected during a subsequent interview with the appellant and written materials provided by the appellant. Record 3 consists of a memorandum to the Administrator from the Senior Human Resources Representative commenting on each incident.

In my view, all of the records at issue in this appeal contain information which falls within the definition of personal information under section 2(1) of the Act. I find that the personal information contained in each of the records is properly considered personal information about both the appellant and other individuals.

ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) applies.

I have found under Issue A that the records contain the personal information of the appellant and other individuals. Section 47(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of provincial institutions covered by the Act. However, this right of access is not absolute. Section 49 provides a number of exemptions to this general right of access. One such exemption is found in section 49(b) of the Act, which 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;

Section 49(b) introduces a balancing principle. The Ministry must look at the information and weigh the requester's right of access to his/her own personal information against other individuals' right to the protection of his/her privacy. If the Ministry determines that the release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the head the discretion to deny the requester access to the personal information (Order 37).

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The Ministry has

not submitted that section 21(3) applies, but the two individuals who made representations suggest that section 21(3)(d) might apply. This section reads:

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

relates to employment or educational history;

The records contain information concerning employment-related incidents involving the appellant and other individuals. However, in my view, the information which relates to individuals other than the appellant cannot accurately be characterized as the employment history of any of these individuals, and I find that section 21(3)(d) does not apply.

Section 21(2) lists a number of circumstances the Ministry must consider in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. The Ministry has not submitted that section 21(2) applies, but the two individuals who made representations suggest that section 21(2)(f) might be relevant to the circumstances of this appeal. This section reads:

At 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,

the personal information is highly sensitive;

Records 1 and 2 are summaries of information provided by the appellant, and Record 3 is a consideration of the issue of harassment raised by the appellant. In my view, the personal information of the other individuals which is contained in the records is not properly considered highly sensitive, and I find that section 21(2)(d) is not a relevant consideration in the circumstances of this appeal.

The appellant submits that she requires the records related to her complaint to assess her situation and consider what other avenues she might wish to pursue.

Having considered the records at issue, the representations which have been provided, and the provisions of the Act which might weigh against disclosure of the records to the appellant, I find that disclosure of the records would not constitute an unjustified invasion of the personal privacy of an individual other than the appellant, and therefore the exemption under section 49(b) of the Act does not apply.

ORDER:

1. I order the Ministry to disclose the records to the appellant within 35 days of the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
2. I order the Ministry to advise me in writing within five days of the date on which disclosure was made. Such notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.
3. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

November 3, 1992