



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

ORDER P-332

Appeal 900371

Ontario Crown Employees Grievance Settlement Board



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ORDER

BACKGROUND:

The Ontario Crown Employees Grievance Settlement Board (the institution) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to:

All documentation, including grievance application forms, legal briefs, evidence exhibits, correspondence, etc. relating to:

OPSEU and the Ministry of Health GSB File No. 1572/88.

The requester indicated that he had appeared as a witness in the proceeding and presented evidence. He requested copies of all records, including the documentary evidence which was summoned and provided to the institution as part of the grievance proceeding.

The institution denied access to the records pursuant to sections 14(1)(e), 17(1)(d), 20 and 21 of the Act, and the requester appealed the institution's decision to this office.

During the course of mediation, the appellant agreed to narrow the scope of his request to the following records:

- 1) copies of letters to Margaret Risk, Executive Director, College of Nurses of Ontario from the appellant, dated September 9, 1988 (5 pages);
- 2) copy of a letter to Vicky Wolf, Complaints and Discipline, College of Nurses of Ontario from the appellant, dated September 20, 1988 (1 page);
- 3) copies of letters to the appellant and five others from Gail Gitterman, Director, Complaints and Discipline, College of Nurses of Ontario dated September 20, 1988 (11 pages);
- 4) copies of letters to the appellant and five others from Gail Gitterman, dated September 27, 1988 (6 pages);
- 5) copy of Minutes from Joint Occupational Health & Safety Local 307 meeting, dated December 8, 1988 (4 pages); and
- 6) decision of the institution in GSB File No. 1572/88 (OPSEU and the Ministry of Health) (4 pages).

In response, the head provided partial access to Records 1, 2, 3, 4 and 6, subject to the following:

The names and addresses of the grievors and their co-workers have been severed. Exemptions are claimed under ss.14(1)(e), 17(1)(d), 20 and 21 of the Freedom of Information and Protection of Privacy Act, 1987.

Record 5 was disclosed to the appellant in its entirety, and is therefore no longer at issue in this appeal.

Further attempts to mediate this appeal were unsuccessful, and 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. Notice was also sent to the 12 persons whose names and addresses were severed from the records (the affected persons), the College of Nurses of Ontario, and the Ontario Public Service Employees Union (OPSEU). Representations were received from the appellant, the institution, the College of Nurses of Ontario, and OPSEU on behalf of the affected persons who were members of its bargaining unit.

PRELIMINARY ISSUE:

The appellant submits that because Records 1 and 2 originated from him, and he previously received copies of Records 3 and 4 from the College of Nurses of Ontario, they are properly considered his property, and should be returned to him. In effect, the appellant is arguing that these records do not fall within the scope of the Act.

The appellant has requested access to Records 1-4 under the Act. Unless specifically excluded, the Act applies to all records in the custody or under the control of an institution, and a requester has a right of access to all responsive records unless they fall within the exemptions set out in section 12 to 22 of the Act. The circumstances under which records came to be in the custody or control of the institution, and whether any records have previously been disclosed may be relevant in the context of the application of certain exemptions, but, in my view, they are not relevant considerations in determining whether the Act applies to these records.

In the circumstances of this appeal, Records 1-4 are in the custody and under the control of the institution, and the Act applies to these records, regardless of whether they originated from the appellant and whether or not copies of the records were previously provided to the appellant. Once these records have been identified by the institution as being responsive to the request, it is my responsibility to determine whether or not these records are properly exempt from disclosure under the Act.

ISSUES:

- A. Whether the information severed from 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 mandatory exemption provided by section 21 of the Act applies to the information severed from the records.
- C. Whether the mandatory exemption provided by section 17(1)(d) of the Act applies to the information severed from the records.
- D. Whether the discretionary exemptions provided by section 14(1)(e) and/or section 20 of the Act applies to the information severed from the records.

- E. If the answer to Issues B, C and/or D is yes, whether section 23 of the Act applies in the circumstances of this appeal.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information severed from the records qualifies as personal information as defined in section 2(1) of the Act.

Personal information is defined in section 2(1) of the Act and reads, in part, as follows:

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

...

- (d) the address, telephone number, fingerprints or blood type of the individual,

...

- (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;

The addresses which were severed from Records 3 and 4 are clearly personal information of the affected persons, pursuant to paragraph (d) of the definition.

The names which were severed from Records 1, 2, 3, 4 and 6 appear in records which contain other personal information relating to the affected persons (i.e. their address and the appellant's opinions of them). In my view, the names which have been severed from Records 1, 2, 3, 4 and 6 are personal information of the affected persons pursuant to paragraph (h) of the definition. Similarly, I find that the names which have been severed from Record 6 are personal information of the affected persons, because they appear in a record which indicates that those persons filed a grievance.

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

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, sections 21(1)(a) and (f) of the Act state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The representations provided by OPSEU indicate that all of the affected persons, except for one who could not be contacted, do not object to the disclosure of their names. Accordingly, I find that disclosure of the names of the affected persons, except the one who could not be contacted, would not be an unjustified invasion of their personal privacy. That narrows the rest of my discussion to the one remaining name and the addresses of the various affected persons.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of the 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 information at issue in this appeal does not qualify as one of the types of information listed in section 21(3).

Section 21(2) provides some criteria for the head to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Sections 21(2)(e), (f) and (h) have been raised by OPSEU and the institution. These sections read:

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,

- (e) the individual to whom the information relates will be exposed to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

The affected persons are/were employed in the maximum security division of a psychiatric hospital. I have been provided with ample evidence describing the residents of the hospital, and reasons why employee addresses must be kept confidential in order to protect their personal security.

In my view, the addresses of the affected persons are properly considered to be "highly sensitive", and disclosure of the addresses would constitute an unjustified invasion of personal privacy of these individuals pursuant to section 21 of the Act.

As far as the name of the one remaining affected person is concerned, the appellant referred to this person by name and expressed opinions about this person in the letters submitted by him and referred to in Record 4. Therefore, in my view, it is reasonable to conclude that the appellant knew this person's name from his everyday experience, and I find that disclosure of this name would not be an unjustified invasion of this affected person's personal privacy, in the circumstances.

Similarly, I find that the name of the one remaining affected person does not satisfy the requirements for exemption under sections 14(1)(e), 17(1)(d) or 20 of the Act.

ISSUE E: If the answer to Issues B, C and/or D is yes, whether section 23 of the Act applies in the circumstances of this appeal.

The appellant, in his representations, raises the application of section 23 of the Act, which reads:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In Order 68, dated June 28, 1989, former Commissioner Sidney B. Linden stated that in order for the so-called "public interest override" to apply, "there must be a compelling public interest in disclosure and this compelling public interest must clearly outweigh the purpose of the exemption, as distinct from the value of disclosure of the particular record in question".

Having considered all relevant representations and the circumstances of this appeal, I am not satisfied that there is a compelling public interest in disclosing the home addresses of the affected persons which clearly outweighs the purpose of protection of personal privacy under section 21 of the Act.

ORDER:

1. I uphold the head's decision not to disclose the home addresses of the affected persons.
2. I order the head to disclose the names of the affected persons as they appear in the requested records.
3. I order that the institution not disclose the records described in Provision 2 of this order until 30 (thirty) days following the date of issuance of this order. This time delay is necessary in order to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the records are actually disclosed. Provided notice 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 records listed in Provision 2 of this order be disclosed within thirty-five (35) days of the date of this order.
4. I order the head 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.

5. 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 were disclosed to the appellant pursuant to Provision 2, only upon my request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

July 20, 1992