



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

ORDER P-333

Appeal P-910008

Ministry of Health



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Ministry of Health (the institution) received a request for all correspondence between a named doctor, the Psychiatric Patient Advocate Office (the PPAO), and a named Patient Advocate.

The records identified by the institution as responsive to the request consist of seven letters between the persons mentioned in the request.

The institution granted partial access to the records, claiming section 21 of the Freedom of Information and Protection of Privacy Act (the Act) as the basis for denying access to the remainder. The requester appealed the institution's decision to this office.

During the course of mediation, the Patient Advocate consented to the release of any of her personal information, and the institution released those parts of the records which contain this information to the appellant. The doctor did not consent to the release of any of his personal information contained in the records.

As a result of mediation efforts, the records which remain at issue in this appeal were reduced to three severed letters, two from the doctor to the PPAO Provincial Co-ordinator, and one from the PPAO Provincial Co-ordinator to the doctor. Two of the letters are dated August 3, 1990 and November 1, 1990, and the third is undated.

Further attempts to mediate the appeal were not successful, 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, the institution, the doctor, the PPAO Provincial Co-ordinator, and two other individuals referred to in the records. Enclosed with each 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. Written representations were received from all the parties. The two other individuals referred to in the records either felt that the records did not contain their personal information or consented to its release.

PRELIMINARY ISSUE:

In his representations, the appellant challenges the authority of the two persons who responded to his request. Specifically, he submits that they did not hold the proper delegated authority pursuant to section 62(1) of the Act.

At the request of the Appeals Officer, the institution forwarded a copy of the institution's delegation of authority which was in effect at the time the decisions were made. I have reviewed this delegation and I agree with the appellant's position. The delegation permits the decision makers in this case to grant access to records, but not to deny access. In my view, release of severed records is more appropriately categorized as "partial denial" than "partial access", as it

relates to delegation of authority, and I find that the decisions made in this case were not in accordance with the institution's delegation of authority.

As a result, in my view, the institution has failed to give a proper notice under section 26 of the Act, and section 29(4) of the Act applies. This section reads as follows:

A head who fails to give the notice required under section 26 or subsection 28(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice

Accordingly, the institution is deemed to have refused access to the records at issue in this appeal. Notwithstanding the fact that the institution has not issued a decision as required under the Act, after receiving representations from the parties during the course of this inquiry, I have the authority to proceed to make an order disposing of the issues raised by this appeal.

It should be noted that the head has now issued a revised delegation of authority under section 62(1) of the Act.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether any of 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 mandatory exemption provided by section 21 of the Act applies to the records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether any of 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 reads, in part, as follows:

"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 view 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;

As mentioned previously, the Patient Advocate and two other individuals identified in the records have consented to the release of their personal information.

The appellant submits that the records contain the personal information of the Patient Advocate only. The institution's submissions imply that the records contain the personal information of the doctor.

Having reviewed the records, I find that one sentence in the undated record contains the personal information of the appellant, and the rest of the records which have not already been released to the appellant during the course of this appeal do not contain personal information.

It has been established in a number of previous orders that information provided by an individual in a professional capacity or in the execution of employment responsibilities is not "personal information" (Orders 113, 139, 157, P-257 and P-326). In the circumstances of this appeal, the doctor was acting in his official capacity as an employee of the institution, and I find that the views and opinions of the doctor about the appellant and others cannot properly be categorized as "personal information" of the doctor under section 2(1) of the Act.

As far as the personal information of the appellant is concerned, section 21 of the Act does not apply, and I order this portion of the record to be released to the appellant. Because the rest of

the severed records do not contain personal information, and no other exemption has been claimed by the institution, I order that they also be released to the appellant.

ORDER:

1. I order the head to disclose the records to the appellant in their entirety.
2. I further order the head not to disclose the records described in Provision 1 of this order until thirty (30) days following the 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 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 record described in Provision 1 of this order be disclosed within thirty-five (35) days of the date of this order.
3. The institution is further ordered to advise me in writing within five (5) days of the date of disclosure, 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, only upon my request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

July 21, 1992