



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

ORDER P-283

Appeal 900636

Ministry of Health



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O R D E R

BACKGROUND:

On September 11, 1990, a request was made to the Ministry of Health (the "institution") for access to records, including statements made by three named individuals, which precipitated a letter of reprimand being placed on the requester's personnel file.

The institution advised the requester that disclosure of the responsive records might affect the interests of three other individuals, and that these individuals (the "affected persons") would be given an opportunity to make representations before the institution decided whether to release the records.

On October 12, 1990, the institution notified the affected persons pursuant to section 28(1) of the Freedom of Information and Protection of Privacy Act (the "Act"). All three persons advised the institution that they objected to disclosure.

On November 9, 1990, the institution advised the requester that access to some records was denied, and that partial access to other records would be granted, subject to certain severances. In all instances, the institution relied on sections 21 and 49(b) as the basis for denying access. The institution also advised the affected persons of its decision, and identified the severances which related to individual affected persons.

On December 6, 1990, the requester appealed the institution's decision and on December 7, 1990, one of affected persons

appealed the head's decision to grant partial access to the one record which contained information relating to her.

The Appeals Officer obtained and reviewed copies of the records. During the course of mediation the one affected person agreed to the disclosure of a severed copy of the record relating to her, and her appeal was settled on that basis.

Further attempts at mediation proved unsuccessful and the matter proceeded to an inquiry. Notice of the inquiry was sent to the institution, the appellant and the three affected persons. Written representations were received from all parties.

The only portions of the records which are at issue in this appeal are those severed portions which were exempted under section 49(b) of the Act. Throughout this Order, I will refer to the records by the numbers noted below:

1. Handwritten notes of the first affected person, denied in their entirety;
2. Typewritten notes of the second affected person, released with severances;
3. Handwritten notes of the third affected person, denied in their entirety;
4. Typewritten addendum to Record #3, released with severances;
5. Investigator's report, released with severances. [The investigative report summarizes Records 1-4 and also includes the investigator's notes, a chronology of events and a performance appraisal.]

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested 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) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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

I have reviewed the information contained in the records and, in my view, it is recorded information about identifiable individuals, namely the affected persons and the appellant, and therefore meets the requirements of the introductory wording of the definition of personal information.

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

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 an institution. 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;

As has been stated in a number of previous orders, section 49(b) introduces a balancing principle. The head 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 head 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 if disclosure of personal information would constitute an unjustified invasion of another individual's personal privacy. I have considered the provisions of section 21(3) and am of the view that none of them are relevant considerations to the records at issue in this appeal. I shall now consider the provisions of section 21(2).

In their representations the head and the affected persons submit that sections 21(2)(f) and (h) are relevant considerations. Although the appellant does not specifically raise section 21(2)(d), his representations refer to the

substance of that section, and I will consider its possible application in my discussion.

Sections 21(2) (d), (f), and (h) of the Act read 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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

Section 21(2) (f)

In its representations, the institution submits that all of the records are highly sensitive because they contain statements made by co-workers (the affected persons) about the requester. Similarly the affected persons submit that Records 1-4 (and by implication Record 5 since it contains a summary of Records 1-4) contain several very personal observations about their working relationship with the appellant and that as such they are highly sensitive. I have reviewed the contents of the records, which describe a series of employment related incidents involving the appellant and the affected persons. In my view, the personal information contained in these records could properly be characterized as highly sensitive, and I find that section

21(2)(f) is a relevant consideration in the context of this appeal.

Section 21(2)(h)

In its representations the institution states that the affected persons provided Records 1-4 at the request of the institution during the course of an investigation into the appellant's conduct. The institution maintains that the affected persons were given verbal assurances that any information they provided would remain confidential. All three affected persons refer to these assurances of confidentiality in their representations, and submit that they would not have agreed to provide the records to the institution without these assurances. I am satisfied that section 21(2)(h) is also a relevant consideration.

Section 21(2)(d)

Following completion of the investigation for which the records were prepared, the appellant attended a disciplinary meeting where evidence was presented concerning the allegations described in the records. As a result of this meeting the appellant received a letter of reprimand.

The appellant states that he is not pursuing the matter formally, but wants access to the records in order to know the exact statements made by the affected persons. He submits that because disciplinary action has been taken against him, he should be given access to the records in order to ensure their accuracy and, if necessary, make a correction request.

In the circumstances of this appeal, the appellant has been provided with a summary of the comments made by the affected persons and a considerable portion of the requested records. I am not convinced that the release of the severed portions of the records is sufficiently relevant to a fair determination of any rights of the appellant and, in my view, section 21(2)(d) is not a relevant consideration in the context of this appeal.

Having examined the records and considered the representations of all parties, it is my view that the disclosure of the parts of the records at issue in this appeal to the appellant would constitute an unjustified invasion of the personal privacy of the affected persons. As such, the records are subject to exemption under section 49(b) of the Act.

Section 49(b) is a discretionary exemption giving the head the discretion to refuse to disclose personal information to the person to whom it relates. I find nothing improper with the head's exercise of discretion and would not alter it on appeal.

ORDER:

I uphold the head's decision to deny access to the portions of the records at issue in this appeal.

Original signed by: _____
Tom Mitchinson

March 24, 1992

Assistant Commissioner