



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

# **ORDER P-297**

**Appeal 900602**

**Ministry of the Correctional Services**



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## O R D E R

### BACKGROUND:

A request was made to the Ministry of Correctional Services (the "institution") for copies of letters related to the requester. They are three letters of complaints received by the institution about the requester in his capacity as an employee of the institution. The institution denied access to the records in their entirety pursuant to section 21 of the Freedom of Information and Protection of Privacy Act (the "Act"). The requester appealed that decision to this office.

In accordance with our normal practice, the Appeals Officer obtained a copy of the records, which are described as follows:

1. Letter dated August 9, 1990 from an inmate to the institution;
2. Letter dated August 9, 1990 from a second inmate to the institution;
3. Undated letter from a third inmate to the institution;

During the course of mediation the institution clarified that it was relying on section 49(b), rather than section 21, as the basis for denying access.

Because mediation was not possible, 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. Enclosed with the 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. Representations were received from the institution, but not from the appellant. Efforts were made to notify the authors of the three records and the two other individuals referred to in Record 1, but none of them could be located.

### ISSUES:

- A. Whether the information contained in the records qualifies as "personal information", as defined by 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.

**DISCUSSION:**

**ISSUE A: Whether the information contained in the records qualifies as "personal information", as defined by 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,

...

(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 views or opinions of another individual about the individual,

...

The records are individual letters written by three inmates which outline incidents involving themselves, two other individuals, and the appellant. I have reviewed the contents of the records and, in my view, they contain the personal information of the appellant, the authors of the letters, and the two other individuals referred to in Record 1.

Section 47(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right to 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;

I will now consider whether section 49(b) of the Act applies to the records.

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

As has been stated in a number of previous orders, section 49(b) introduces a balancing principle which requires that the head look at the information and weigh the requester's right of access to his/her own personal information against another individual's 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, section 49(b) gives him/her 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 would result in an unjustified invasion of another individual's personal privacy. The institution submits that section 21(3)(g) is a relevant consideration. I have considered this and other provisions of section 21(3) and am of the view that none of these provisions are relevant considerations with respect to the records at issue in this appeal. I shall now consider the provisions of section 21(2).

The institution submits that section 21(2)(f) is a relevant consideration.

Section 21(2)(f)

Section 21(2)(f) states:

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;

In its representations, the institution submits that all of the information contained in the records is highly sensitive, because it consists of concerns and anxieties raised by the affected persons for their own health and safety, based on incidents involving the appellant and having the potential to be a threat to the safety of other inmates.

I have carefully reviewed the contents of the records. They all consist of personal accounts of a number of incidents involving the appellant and certain inmates. In my view, this information could properly be characterized as highly sensitive, and I find that section 21(2)(f) is a relevant consideration.

The institution also submits that section 21(2)(h) is a relevant consideration.

Section 21(2)(h)

Section 21(2)(h) states:

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 has been supplied by the individual to whom the information relates in confidence;

The institution submits that the information was supplied in confidence, pointing out the need for staff and inmates to have the ability to communicate verbally or in writing with the

Superintendent on issues or concerns. In the institution's view, it is explicitly or implicitly acknowledged that information can be shared in confidence, and is assumed to be confidential unless otherwise stipulated.

The institution goes on to state that inmates must feel secure in communicating with the Superintendent, without fear of repercussion from staff or other inmates, and without fear of threats to the health and safety of themselves and others. The ongoing flow of information is of paramount importance to maintain control and security within a correctional centre.

In the circumstances of this appeal, I feel that the manner in which the records were submitted to and received by the institution could lead to a reasonable expectation that they would be treated confidentially. Therefore, I find that section 21(2) (h) is a relevant consideration.

As mentioned earlier, the appellant declined to submit representations during the course of this appeal. I have reviewed the various provisions of section 21(2) as they relate to the interests of the appellant, and, in the absence of submissions from the appellant, I am unable to determine the relevance of any of them.

In summary, I find that sections 21(2) (f) and (h) are relevant considerations in favour of a finding that disclosure of the records would constitute an unjustified invasion of the personal privacy of the authors of the records and the two other individuals referred to in Record 1. All three records qualify for exemption under section 49(b).

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

Finally, I have reviewed the records with a view to determining whether any portion could be severed under section 10(2) of the

Act. In my view, no information could be severed and provided to the appellant without disclosing information that legitimately falls within the section 49(b) exemption.

**ORDER:**

1. I uphold the decision of the head to not disclose Records 1, 2 and 3.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ May 20, 1992