



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-421

Appeal P-920088

Ministry of Correctional Services



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ORDER

BACKGROUND:

The Ministry of Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the requester's personal and medical files from four named correctional centres.

The record which the Ministry identified as being responsive to the request consisted of 683 pages. The Ministry granted access to certain parts of the record and denied access to others, either in whole or in part, pursuant to sections 14(1)(b) and (h), 14(2)(d) and 49(b) and (e) of the Act. The requester appealed the Ministry's decision to deny access to pages 24, 38, 43, 122 and 173 and part of pages 14, 176 and 177.

During mediation of the appeal, the Ministry issued a revised decision granting access to pages 38 and 43. The Ministry also claimed sections 14(1)(a), (c) and (e) as additional exemptions. The severed information from page 14 of the record does not relate to the appellant, and is not responsive to his request. All of the information on this page that relates to the appellant has been disclosed to him. The remaining information falls outside the scope of this appeal, and will not be dealt with in this order.

The parts of the record that remain at issue are pages 24, 122 and 173 in their entirety, and parts of pages 176 and 177.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Written representations were received from the Ministry only.

The pages of the record for which the Ministry claimed Section 49(b) of the Act are no longer at issue; therefore this section will not be considered in this order.

Pages 24 and 173 are internal memoranda prepared by an employee of the Ministry and relate to the appellant's application for a temporary leave of absence from the correctional centre in which he was an inmate. These two pages have been withheld in their entirety.

Page 176 is a document entitled "Unit Report for Temporary Leave of Absence Application". It is a form, parts of which were completed by the appellant, and contains "unit staff" comments. The information severed from this page consists of a notation made on the margin of the page by a Ministry staff member and relates to the application.

Page 177 is the actual Temporary Absence Application form, parts of which were completed by the appellant. The information severed from this page is contained in the "Recommendation" and "Approval" portions of the form, completed by Ministry staff.

Page 122 is a list of names of individuals other than the appellant, and was found in the appellant's personal file.

ISSUES:

The issues arising in this appeal are:

- A. Whether the discretionary exemption provided by section 49(e) of the Act applies.
- B. Whether the discretionary exemptions provided by sections 14(1)(a), (b), (c), (e) or (h) of the Act apply.
- C. Whether the discretionary exemption provided by section 14(2)(d) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 49(e) of the Act applies.

In its representations, the Ministry states that it is relying on section 49(e) to exempt pages 24, 173, and the relevant parts of pages 176 and 177.

Section 2(1) of the Act reads, in part:

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

...

- (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,

...

[Emphasis added]

In my view, all of the information contained in pages 24, 173, 176 and 177 falls within the definition of personal information under section 2(1) of the Act, and relates solely to the appellant.

Section 47(1) of the Act gives individuals a general right of access to any personal information that relates to them, in the custody or under the control of institutions covered under the Act. However, this right of access is not absolute. Section 49 provides a number of exceptions to this general right of access, including section 49(e) of the Act, which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

that is a correctional record where the disclosure could reasonably be expected to reveal information supplied in confidence;

Section 49(e) allows the Ministry to deny a requester access to his/her personal information in situations where the information is a correctional record and release of the information could reasonably be expected to reveal information that was supplied in confidence (Order 64).

In its representations, the Ministry states that it is an integral part of the criminal justice system, responsible for the supervision, detention and release of offenders. It submits:

The Ministry has the authority to enforce a warrant of committal; to apply varying degrees of discipline governing inmate conduct, to release an inmate on temporary absence, and to conduct inspections in connection with the operation of the statutes of the Ministry of Correctional Services Act (the MCSA).

The Ministry states that the information at issue in this appeal is a correctional record created during the Ministry's discharge of its responsibilities.

A review of the record indicates that the information withheld from the appellant consists of information received from a third party by employees of the correctional centre processing the appellant's application for temporary leave of absence. The Ministry submits that this information was supplied to it by the third party in confidence.

Having considered the nature of the record and the Ministry's representations with respect to the circumstances of the receipt of the information, I am satisfied that the personal information is a correctional record which, in my view, would reveal information supplied to the Ministry in confidence.

Therefore, I find that pages 24 and 173, in their entirety, and the severed parts of pages 176 and 177 qualify for exemption under section 49(e) of the Act.

Section 49(e) is a discretionary exemption. In reviewing the Ministry's representations regarding its exercise of discretion in refusing to disclose the above-noted parts of the record, I have found nothing to indicate that it was improper, and will not alter it on appeal.

ISSUE B: Whether the discretionary exemptions provided by sections 14(1)(a), (b), (c), (e) or (h) of the Act apply.

The Ministry claims that page 122 is exempt under section 14(1)(h) of the Act. This section states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;

In my view, section 14(1)(h) allows the Ministry to deny a requester access to a record where **either** the record at issue is itself a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation, **or** where the disclosure of the record could reasonably be expected to reveal another record which has been confiscated from a person by a peace officer, in accordance with an Act or regulation.

In its representations, the Ministry submits that page 122 of the record was discovered by the security staff of the correctional centre during a search of the appellant's property and was confiscated from the appellant by the Superintendent of the correctional facility in which the appellant was an inmate.

The Ministry submits that the Superintendent is a designated peace officer, under section 11(1)(a) of the MCSA, which states:

The Minister may designate in writing,

a person who is an employee of the Ministry or is employed at a place of open custody, secure custody or temporary detention, to be a peace officer while performing the person's duties and functions;

The Ministry indicates in its representations that the Superintendent was acting in his capacity as a peace officer when he confiscated the record from the appellant.

The Ministry further states that the record was confiscated under the authority of sections 22(1) and 25(1) of Regulation 649, under the MCSA. These sections read as follows:

- 22.--(1) The Superintendent may authorize a search, at any time, of,
- (a) the institution or any part of the institution;
 - (b) the person of an inmate;
 - (c) the property of an inmate; or
 - (d) any vehicle located in the premises of the institution.

- 25.--(1) The Superintendent shall ensure that a written record is made of every inmate search and the record shall include,
- (a) the name of the inmate searched;
 - (b) the reasons for the search; and
 - (c) a description of any property seized or damaged in the search.

The Ministry has provided me with detailed representations outlining the circumstances of the confiscation of the record, and the legal authority under which it was confiscated. The appellant has not submitted any representations with respect the issues in this appeal. Having carefully considered the Ministry's representations, and the provisions of the MCSA and Regulation 649, under the MCSA, I am satisfied that the Ministry has provided sufficient evidence to establish that page 122 meets all the requirements to qualify for exemption under section 14(1)(h) of the Act.

Section 14(1)(h) is a discretionary exemption. In reviewing the Ministry's representations regarding its exercise of discretion in refusing to disclose page 122 of the record, I have found nothing to indicate that it was improper, and will not alter it on appeal.

Because of the manner in which I have disposed of Issues A and B, it is not necessary for me to deal with Issue C.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Asfaw Seife
Inquiry Officer

February 25, 1993