



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

ORDER P-515

Appeal P-9200411

Ministry of Health



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ORDER

BACKGROUND:

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to two specific letters relating to the requester which were sent to the Ministry by a third party. The Ministry identified two letters dated December 2, 1991 and January 9, 1992, respectively, which it considered to be responsive to the request.

The Ministry notified the purported author of the letters as a third party to the request under section 28(1) of the Act. In the response received, the third party indicated, among other things, that he/she was not the person who wrote the letters. After considering the objections to disclosure, the Ministry decided to release the letters to the requester except for the name, signature and address of the author, which the Ministry withheld pursuant to section 21(1) of the Act. The requester appealed the Ministry's decision.

Mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry and to the purported author of the letters. At the same time, the Commissioner's Office asked the Ministry to consider the possible application of section 49(b) of the Act to the records. Representations were received from the Ministry and the appellant only.

The information at issue in this appeal consists of the name and address of the author of a letter dated December 2, 1991 (Record 1) and the name and signature of the author of a letter dated January 9, 1992 (Record 2). The first letter contains, among other things, a complaint about the appellant's operation of his business. The second letter asks the Ministry to cease any investigation of the appellant's business which it may have initiated in response to the first letter.

ISSUES:

The issues arising in this appeal are:

- A. Whether 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 discretionary exemption provided by section 49(b) of the Act applies.
- C. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether 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 states, in part, that:

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

...

(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,

...

(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;

In its representations, the Ministry states that the records contain the personal information of the purported author of the letters only. With respect to Record 1, that personal information would subsume the author's name and address, as well as his/her personal opinions about the delivery of ambulance services in a named location. For Record 2, the personal information consists of the name and address of the purported author of the letters. The Ministry further asserts that the records do not contain any personal information relating to the appellant because the views expressed by the purported author relate to the appellant's business and not to the appellant, himself.

I accept the Ministry's submission that the identity and the address of the purported author of the letters, as well as the opinions which he/she has expressed about the delivery of ambulance services, constitute the author's personal information. I do not, however, accept the proposition that there is no personal information about the appellant contained in the records. In the first letter, the appellant is identified specifically as the owner and/or operator of two local businesses. The letter then outlines complaints about the appellant's operation of these businesses, including references to the appellant's family and personal friends. Although Record 2 does not refer to the appellant by name, it relates to the initial complaints set out in Record 1.

In order to satisfy the definition of "personal information" contained in section 2(1) of the Act, a record must contain information about an identifiable individual. It has been held in Order 113 that information which outwardly pertains to a business entity may, in certain circumstances, more properly relate to an identifiable individual. If that is the case, the information may then qualify as that individual's personal information.

I have carefully reviewed the two letters and, in my opinion, some of the views expressed by the author are directed at the appellant as an individual, while others pertain to his position as the owner of a business. On this basis, I find that the records also contain some personal information relating to the appellant.

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

I have found under Issue A that the record contains the personal information of both the appellant and the purported author of the letters.

Section 47(1) of the Act gives individuals a general right of access to personal information in the custody or control of institutions. However, this right of access is not absolute. Section 49(b) provides an exception to this general right of disclosure of personal information to the person to whom the information relates. Specifically, section 49(b) provides that:

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;

Section 49(b) introduces a balancing principle. The Ministry must 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 personal privacy. If the Ministry 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 Ministry the discretion to deny the requester access to the personal information.

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his own personal information, the only situation under section 49(b) in which he can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of the personal privacy of the individual to whom the information relates. I have carefully reviewed the contents of the two records and find that neither section 21(3) nor 21(4) apply to the personal information at issue.

Section 21(2) of the Act provides some relevant circumstances for the Ministry to consider in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. This provision reads, in part, as follows:

[IPC Order P-515/August 12, 1993]

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;

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

...

(g) the personal information is unlikely to be accurate or reliable;

...

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

In interpreting section 21(2) of the Act, it is important to note that all the relevant circumstances of the case must be considered, not only those specifically referred to in the section.

The Ministry relies specifically upon sections 21(2)(e) and (g) to support its decision to deny access. The Ministry has also indirectly raised the application of section 21(2)(i) of the Act. Although representations were not received from the purported author of the letters, the Ministry's representations refer to this individual's submissions which were provided in response to the section 28(1) notice. There, the purported author argues that the personal information should not be released based on the considerations outlined in sections 21(2)(e) and (g) of the Act.

The appellant's representations do not directly refer to any of the circumstances set out in section 21(2) of the Act. I believe, however, that it can be inferred from the submissions that the appellant is raising the application of section 21(2)(d) of the Act.

I will first consider the relevance of section 21(2)(d) of the Act (the personal information is relevant to a fair determination of the rights affecting the person who made the request). In Order P-312, former Assistant Commissioner Tom Mitchinson established the following requirements which must be met for section 21(2)(d) to apply to personal information contained in a record:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; **and**
- (2) the right in question is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; **and**
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

I adopt this test for the purposes of this appeal.

The appellant states that there have been various incidents in which his home and property have been vandalized, and where obscene telephone calls have been placed to his home. The appellant also indicates that he has obtained a peace bond against a particular individual for uttering threats against him and his family. The appellant states that he wishes to know who wrote the letters so that he can:

get this person to stop harassing my family and me, if it should turn out to be the same person who I have a peace bond against.

The appellant appears to be asserting a legal right to be free from harassment by the particular person against whom he has obtained a peace bond.

The appellant has suggested that he may commence a proceeding to enforce the peace bond if (1) the identity of the author of the letters is revealed and (2) the author is the same person against whom the peace bond was originally obtained. There is, however, no current legal proceeding which has been initiated nor, in my view, is it entirely clear that the disclosure of the identity of the author of the letters would trigger a provision in the peace bond. In the absence, therefore, of an existing legal proceeding or one that is reasonably contemplated, and based on the test established in Order P-312, I find that the appellant has not made out a case for the application of section 21(2)(d) of the Act.

The Ministry, for its part, submits that section 21(2)(e) is a relevant consideration in the circumstances of this appeal (the individual to whom the information relates will be exposed unfairly to pecuniary or other harm). In advancing this argument, the Ministry relies on the submission made by the purported author of the letters that certain specified harms would occur to the individual if the information contained in the letters were disclosed. I find that the

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concerns put forward are quite general in nature and, in the absence of further evidence, I conclude that section 21(2)(e) does not apply to the information in question.

The Ministry also believes that section 21(2)(g) of the Act applies to the facts of this case (the personal information is unlikely to be accurate or reliable). To support this position, the Ministry once again relies on the submissions of the purported author of the letters that:

The first letter in question bears no signature and the second has a signature not similar to mine. I do not want my name associated with these documents as it suggests that I wrote them.

Based on this statement from the purported author of the letters, the Ministry submits that the personal information contained in the records is unlikely to be accurate or reliable. The Ministry's representations do not indicate, however, whether any attempts were made to confirm the contents or authorship of the letters. On this basis, I am not in a position to determine whether the information contained in the records is accurate or not. I find, therefore, that section 21(2)(g) of the Act is not a relevant factor to consider in this appeal.

The Ministry also submits that section 21(2)(i) of the Act applies to the two letters. In its representations, the Ministry states that, if the purported author did not write these letters, the release of his/her identity could unfairly damage this individual's reputation. While it is not possible for me to determine whether, in fact, this individual actually drafted the letters, doubt has been cast on this issue. In the circumstances of this appeal, I am prepared to accept that, if this individual did not author the correspondence, the release of the relevant personal information could damage the individual's reputation and that this damage would be "unfair". On this basis, I find that section 21(2)(i) is a factor of consider in this case.

In applying section 21(2) of the Act to the circumstances of this appeal, I have also considered that the appellant has received the text of both letters (minus the information about the identity of the author) and that, on this basis, he has full knowledge of the complaints made out against him. This factor also weighs in favour of protecting the privacy interests of the purported author.

To summarize, therefore, I find that none of the considerations set out in section 21(2) of the Act, which would weigh in favour of disclosing the personal information in the letters, apply in the circumstances of the case. I have also concluded that there are two factors (unfair damage to reputation and the fact that most of the information contained in the letters has already been disclosed) that weighs in favour of not releasing any further information. Based on a balancing of these considerations, it is my view that disclosure of the identity of the purported author of the letters would represent an unjustified invasion of his/her personal privacy. I find, therefore, that the exemption contained in section 49(b) of the Act applies to the personal information in question.

Section 49(b) is a discretionary exemption. The Ministry has provided representations regarding the exercise of its discretion to refuse to disclose the identity of the purported author of the letters and I find nothing to indicate that the exercise of discretion was improper in the circumstances.

Due to my finding under Issue B that the personal information should not be disclosed, it is not necessary for me to deal with Issue C.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

August 12, 1993