



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

ORDER P-564

Appeal P-9300269

Ministry of Health



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ORDER

BACKGROUND:

The Ministry of Health (the Ministry) received two requests under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the Community Mental Health Branch and Consumer/Survivor Development Initiative, specifically pertaining to the Ontario Psychiatric Survivors Alliance. The Ministry separated the request into two files: 93078-MOH relating to general records; and 93083-MOH relating to the requester's personal information.

Decisions were provided to the requester for both requests, and partial access was granted to the records in each file. The requester appealed the denial of access to the remaining records in each file. Appeal files P-9300269 was opened for request 93078 and P-9300270 for 93083.

Appeal P-9300270

During mediation, the Ministry agreed to release additional records relating to Appeal P-9300270, and the appellant agreed to withdraw her objections to the exemptions applied to some records as they contained the personal information of other individuals. The only record left at issue in this appeal was Record 29. During discussions between the Appeals Officer and the Ministry, it was agreed that Record 29 should have been included with the request relating to general records. Record 29 was, therefore, transferred to Appeal P-9300269. As all issues in Appeal P-9300270 had been resolved, the file was closed.

Appeal P-9300269

Following the closure of Appeal P-9300270, the Ministry agreed to release further records from Appeal P-9300269, and the appellant agreed to withdraw objections to all other severances with the exception of two records: Record 29 from Appeal P-9300269 and Record 29 (now referred to as 29A) which was transferred to Appeal P-9300269 from Appeal P-9300270.

Access to both Records 29 and 29A was denied pursuant to section 21(1). During mediation, the author of Record 29 (the first affected person) was contacted by the Ministry to determine whether the individual would consent to disclosure, but consent was not given. The Ministry was unable to contact the author of Record 29A, (the second affected person) .

Further mediation of the appeal 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 the affected persons. Representations were received from the Ministry and both affected persons.

RECORDS AT ISSUE:

1. Record 29 is a 4-page letter to the Community Mental Health Branch from the first affected person and was denied in its entirety.

2. Record 29A is a 10-page letter to the Consumer/Survivor Development Initiative from the second affected person. References within the letter to the appellant were released to her and access was denied to the rest.

ISSUES:

The issues in this appeal are as follows:

- A. Whether the records contain "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 the records contain 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,

...

(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,

...

(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;

Record 29 is a letter written to the Director of the Community Mental Health Branch by the first affected person in which the individual expresses his personal feelings regarding his employment, and outlines the concerns he had and the reasons for submitting his resignation.

Record 29A is a letter written to the Consumer/Survivor Development Initiative and is a summary of the events leading up to the second affected person's termination of employment. A portion of the letter made reference to the appellant and that portion was released. The remainder of the letter contains the affected party's personal views and opinions about her employment.

In my view, the information contained in both letters qualifies as personal information under one or more of the above-mentioned paragraphs of section 2(1) of the Act and relates to individuals other than the appellant.

ISSUE B: If the answer to A is yes, whether the mandatory exemption provided by section 21 of the Act applies to the records.

I have found under Issue A that the records contain the personal information that relates to individuals other than the appellant.

Section 21(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in the circumstances listed in section 21(1)(a) through (f) of the Act. In my view, the only exception to the mandatory exemption contained in section 21(1) of the Act which has potential application in the circumstances of this appeal is section 21(1)(f). This section reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) provide guidance in determining whether or not disclosure of personal information would result in an unjustified invasion of an individual's privacy. I have reviewed the records, and in my view, they do not contain any personal information which falls under the ambit of either section 21(3) or (4).

The Ministry submits that the considerations under sections 21(2)(f) and (h) are relevant in the circumstances of this appeal. These sections state 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,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

The Ministry states that both records were submitted in confidence. The first affected person submits that at the time of writing, he considered Record 29 to be correspondence strictly between himself and the individual to whom it was addressed, communicated on a personal level. The second affected person indicates that she was not employed with the Ministry at the time Record 29A was written and she considered her letter to be of a personal and confidential nature.

Having reviewed the contents of Records 29 and 29A and the representations of the Ministry and the affected persons, I am of the view that section 21(2)(h) is a relevant consideration in this appeal.

The appellant, in her letter of appeal, offers the following argument in favour of disclosure:

I am requesting access ... on the grounds that correspondence received "in confidence" may contain inaccurate allegations and information based upon a "rumour mill" to which only C.S.D.I. [Consumer/Survivor Development Initiative] seems to have access ... I need to bring all information to the board of the aforementioned corporation to assist them in filing their current complaints against C.S.D.I.

In essence, the appellant has suggested that the consideration under section 21(2)(g) may be relevant. The appellant also raised section 21(2)(a) as a relevant consideration in this appeal. These sections read:

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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (g) the personal information is unlikely to be accurate or reliable;

With regard to section 21(2)(a), the appellant did not provide any explanation as to why section 21(2)(a) may be a relevant consideration. Having reviewed the contents of the records, I find that section 21(2)(a) is not relevant in the circumstances of this appeal.

With respect to section 21(2)(g), it should be noted that a finding that the section is relevant would weigh in favour of privacy protection and not in favour of the appellant's argument that the records should be disclosed. As indicated earlier in this order, the personal information contained in the records relates solely to individuals other than the appellant. Accordingly, I find that section 21(2)(g) is not a relevant consideration in the circumstances of this appeal.

In summary, I find that none of the factors under section 21(2) of the Act which favour disclosure of the records are present in the circumstances of this appeal. The factor under section 21(2)(h) which I found to be present, supports the position that disclosure would constitute an unjustified invasion of the personal privacy of the affected persons.

Having reviewed the contents of the records and the representations of the parties, I find that the exception contained in section 21(1)(f) does not apply in the circumstances of this appeal, and the records are properly exempt under section 21 of the Act.

ORDER:

I uphold the Ministry's decision to deny access to Records 29 and 29A.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ October 29, 1993