



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

ORDER P-640

Appeal P-9300577

Ministry of Community and Social Services



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ORDER

On January 4, 1994, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the name of the individual who made a complaint over the telephone to the Ministry alleging that an unlicensed day nursery was being operated on the requesters' premises, in contravention of the Day Nurseries Act (DNA).

The Ministry located a one-page form entitled "Complaint Information", and provided partial access to the requesters, with the name and telephone number of the complainant (the affected person) severed pursuant to section 21 of the Act. The requesters appealed the decision of the Ministry.

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the Ministry was sent to the Ministry and the appellants. Representations were received from both parties.

ISSUES:

The issues arising in this appeal are:

- A. Whether the record contains "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 record contains "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,
...
- (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;

I have reviewed the record at issue. In my view, the record as a whole contains recorded information about the appellants and the affected person and, thereby, qualifies as the personal information of both within the meaning of section 2(1) of the Act.

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

Under Issue A, I found that the record as a whole contains the personal information of the appellants and the affected person.

Section 47(1) of the Act gives individuals a general right of access to personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 49 provides a number of exceptions to this general right of access. Specifically, section 49(b) of the Act provides:

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 appellants' right of access to their own personal information against the affected person's right to the protection of his/her privacy. If the Ministry determines that the disclosure of the information would constitute an unjustified invasion of the affected person's personal privacy, then section 49(b) gives the Ministry the discretion to deny the appellants access to the personal information (Order 37).

In my view, where the personal information relates to the appellants, the onus should not be on the appellants to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of the affected person. Since the appellants have a right of access to their own personal information, the only situation under section 49(b) in which

they can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of the affected person's privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy.

The Ministry submits that the presumption contained in section 21(3)(b) of the Act applies. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The DNA provides a complete scheme for the licensing and operation of day nurseries in Ontario and contains provisions for enforcing and regulating compliance with the DNA.

Section 11(1) of the DNA stipulates that no person shall establish, operate or maintain a day nursery without a licence. When allegations are made that a premises is operating as a day nursery, section 16(4) of the DNA authorizes a program advisor to investigate.

Pursuant to section 21 of the DNA, every person who contravenes the provisions of the DNA, specifically, sections 11(1) and 16, is liable to a fine or imprisonment, or both.

The Ministry submits that it is the practice of the Ministry to investigate all complaints in order to ensure compliance with the DNA. In this case, the Ministry undertook a formal investigation as a result of the complaint made by the affected person against the appellants. The investigation concluded that the allegations were false.

In my view, the information at issue in this appeal was compiled by the Ministry in the course of its investigation into a possible violation of the DNA. Accordingly, I find that the presumption afforded by section 21(3)(b) of the Act applies.

The only way in which a section 21(3) presumption can be rebutted is if the personal information at issue falls under section 21(4) of the Act or where a finding is made under section 23 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 21 exemption (Order M-170).

I have considered section 21(4) of the Act and find that none of the personal information at issue in this appeal falls within the scope of this provision. In addition, the appellants have not argued that the public interest override set out in section 23 of the Act applies. Accordingly, I find that as the presumption described in section 21(3)(b) of the Act has not been rebutted, the disclosure

of the personal information contained in the record would constitute an unjustified invasion of the personal privacy of the affected person. The name and telephone number of the affected person, therefore, qualify for exemption under section 49(b).

Section 49(b) of the Act is a discretionary exemption giving the Ministry the discretion to refuse to disclose personal information to the person to whom it relates. I have reviewed the representations of the Ministry, and I find nothing to indicate that the exercise of discretion was improper in the circumstances of this appeal.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ March 1, 1994