



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario_ 1 -**

ORDER P-642

Appeals P-9300154 and P-9300176

Ministry of Community and Social Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

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 all information supplied to the Ministry by two named women's shelters which related to an investigation into a service complaint made by the requester regarding his former spouse and child.

The Ministry divided the request into two parts, one for each of the named shelters. The Ministry denied access in their entirety to records relating to one shelter and to portions of the records relating to the second shelter, pursuant to section 21 of the Act. The requester appealed these decisions to the Commissioner's office.

During the mediation stage of these appeals, attempts were made to contact the former spouse (the affected person) of the appellant but these attempts were unsuccessful. Notice that an inquiry was being conducted to review the decision of the Ministry was sent to the appellant, the affected person and the Ministry. Representations were received from the appellant and the Ministry only.

The records which are at issue in these appeals are described as follows:

Record 1 (Appeal Number P-9300154):

A two-page letter from the Executive Director of a named women's shelter to a Program Supervisor at the Ministry.

Record 2 (Appeal Number P-9300176):

Those portions of twelve pages of documents to which access had been denied to the appellant, consisting of a three-page letter from the Executive Director of the second shelter to a Program Supervisor at the Ministry and nine pages of notes taken by the Executive Director and other staff of the second shelter.

It should be noted that women's shelters are not recognized as agencies, boards or commissions as identified in the Schedule of Institutions for the purposes of the Act and are, therefore, not subject to the provisions of the Act. Women's shelters are, however, considered to be transfer payment agencies and as such, records which they supply to the Ministry pursuant to their funding agreements may be the subject of an access request under the Act, through the Ministry.

ISSUES:

The issues arising in these appeals 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, and the personal information is that of individuals other than the appellant, whether the mandatory exemption found in section 21(1) of the Act applies to the records.
- C. If the answer to Issue A is yes, and the personal information is that of the appellant and other individuals, whether the discretionary exemption found in section 49(b) 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.

Personal information is defined in section 2(1) of the Act, in part, as:

"recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
...
- (e) the personal opinions or views of the individual except where they relate to another individual,
...
- (g) the views or opinions of another individual about the individual, and
- (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 carefully reviewed the records and the representations of the Ministry and the appellant. In my view, Record 1 contains the personal information of individuals other than the appellant. Record 2 contains the personal information of both the appellant and other individuals.

ISSUE B: If the answer to Issue A is yes, and the personal information is that of individuals other than the appellant, whether the mandatory exemption found in section 21(1) of the Act applies to the records.

I have found under Issue A that Record 1 contains the personal information of individuals other than the appellant. Once it has been determined that a record contains personal information,

section 21(1) of the Act prohibits the disclosure of this information to anyone other than the person to whom the information relates, except in certain circumstances.

In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f), which reads as follows:

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.

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal 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 the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy (Order P-237).

I have carefully considered the contents of Record 1 and the representations and have determined that none of the subsections under sections 21(3) or (4) apply to the information contained in Record 1.

In its representations, the Ministry has relied upon subsection 21(2)(f) of the Act in refusing to disclose the information at issue. This section reads 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,

the personal information is highly sensitive;

The Ministry submits that because of the often volatile nature of the domestic conflicts which lead women to seek residence in a women's shelter, it is standard practice for such shelters to not give out information about residents without the consent of the resident. The legal agreements between such shelters and the Ministry ensure the highest degree of confidentiality for the protection of the personal privacy and physical safety of the residents.

After reviewing the representations of the parties and Record 1, I agree that section 21(2)(f) is a relevant consideration, weighing in favour of non-disclosure. In his representations, the appellant submits that he needs the information "in the best interests of the child" and states he will shortly be involved in a court hearing over a custody issue. He contends that disclosure of the records are necessary in order to guarantee an impartial trial and also for the purpose of proving perjury on the part of the affected person.

While not specifically citing the section, the appellant is clearly raising the application of section 21(2)(d) of the Act, which reads:

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 relevant to a fair determination of rights affecting the person who made the request;

In order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

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 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.

[Order P-312]

While Parts 1 and 2 of the above test would seem to have been met, I am not convinced that the appellant has met the necessary threshold of proof regarding Parts 3 and 4 of the test. The appellant has not provided me with any direct link between the disclosure of this information and a fair determination of his rights; nor has he proven that an impartial trial can only be ensured by the disclosure to him of information contained in Record 1. Accordingly, I am not convinced that section 21(2)(d) is a relevant consideration in this appeal.

As I have found that the only relevant consideration is one which favours privacy protection, in my view, the disclosure of Record 1 would constitute an unjustified invasion of the personal privacy of the affected person and it should not be disclosed to the appellant.

ISSUE C: If the answer to Issue A is yes, and the personal information is that of the appellant and other individuals, whether the discretionary exemption found in section 49(b) of the Act applies to the records.

Under Issue A I found that Record 2 contains the personal information of the appellant as well as other identifiable individuals. Section 47(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of an institution. However, this right 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) of the Act 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 institution the discretion to deny the requester access to the personal information (Order 37).

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(3) lists types of information, whose disclosure is presumed to be an unjustified invasion of personal privacy. I have considered sections 21(3) and (4) of the Act and find that none of the personal information contained in Record 2 falls within the ambit of these provisions.

Record 2 describes the stay of the affected person at the named shelter and also contains information about the appellant's contacts with the shelter in his efforts to obtain information concerning the whereabouts of other individuals. The Ministry submits that it has disclosed to the appellant as much of Record 2 as can reasonably be severed without disclosing any of the personal information of other individuals.

Both the appellant and the institution rely on the submissions which they made with respect to Record 1. However, with respect to Record 2, the appellant raises an additional factor for consideration. He has provided a copy of an order from the Alberta Court of the Queen's Bench dated September, 1993 in which his former spouse is ordered to provide to him, among other things, a signed authorization for the release of information which had been compiled by the second women's shelter during his former spouse's stay there.

The appellant states that he has received certain information from the shelter pursuant to the Alberta Court Order and has provided a copy to the Commissioner's office. I have reviewed the contents of the documents referred to by the appellant in conjunction with Record 2. I find that while the information released to him by the shelter in response to the Court Order is not a verbatim account of the information in Record 2, it contains a summary of it which sets out the facts surrounding the former spouse's stay at the shelter and, in addition, gives a generalized account of the appellant's contacts with the shelter. Record 2 sets out the same facts regarding the affected person's stay at the shelter but gives a more detailed accounting of the appellant's contact with the shelter as well as the shelter's response.

The information contained in Record 2 which remains undisclosed to the appellant may be characterized as either the personal information of other individuals or information relating to the shelter's internal procedures and policies. In my discussion of Issue A, I found similar information to be of a highly sensitive nature, as contemplated by section 21(2)(f) of the Act.

I also found in my discussion of Issue A that section 21(2)(d) of the Act is not a relevant consideration in the circumstances of this appeal. Accordingly, in balancing the appellant's right to access against the protection of the privacy of the affected person, I find that, as in my discussion of Issue A, there are no factors weighing in favour of disclosure of the information at issue. There does, however, exist a consideration weighing in favour of privacy protection. For this reason, I find that disclosure to the appellant of the undisclosed portions of Record 2 would constitute an unjustified invasion of the personal privacy of the affected person and this information should not be disclosed to the appellant.

ORDER:

I uphold the Ministry's decision to deny access to Records 1 and 2.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ March 3, 1994