



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-648**

**Appeal P-9300117**

**Social Assistance Review Board**



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# ORDER

## BACKGROUND:

The Social Assistance Review Board (the Board) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the notes taken by the Board members who heard two specific cases. The Board denied access to the notes pursuant to sections 21 and 22(a) of the Act. The requester appealed the Board's decision.

During the course of mediation, the Board indicated that each case was heard by only one Board member. The same individual heard both cases.

Mediation was not successful, and notice that an inquiry was being conducted to review the Board's decision was sent to the appellant and the Board. Representations were received from both parties. In its representations, the Board withdrew its reliance on section 22(a).

The parties were subsequently asked to comment on the application, if any, of section 23 of the Act to the circumstances of this appeal. Supplementary representations were received from both the Board and the appellant.

## THE RECORDS:

The Board member's notes are written on a preprinted form entitled "Record of Hearing". The first two pages of each form contain spaces for the name and other personal data about the appellant, appearances, the decision appealed from and the documents received at the hearing from the parties. The other pages are either lined or blank and consist of the notes taken by the member during the hearing. The last page contains a space for the member's decision and signature of the member(s) who heard the case.

## ISSUES:

- 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 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) states, in part, that "... personal information means recorded information about an identifiable individual".

I have reviewed the records and find that they contain the personal information of identifiable individuals, namely the two individuals whose cases were being heard before the Board.

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

In Issue A I found that the records contain personal information which relates to 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 the personal information to any person other than to the individual to whom the information relates, except in the circumstances listed in sections 21(1)(a) through (f) of the Act.

In my view, the only exception to the mandatory exemption contained in section 21 of the Act which has potential application 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.

Since 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 constitute an unjustified invasion of personal privacy. Section 21(3) identifies specific types of information the disclosure of which is presumed to be an unjustified invasion of personal privacy. In its representations, the Board submits that sections 21(3)(a), (c), (d) and (f) apply to the records. These sections state:

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

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history; and

- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

I will first consider the application of section 21(3)(c) of the Act.

In its representations, the Board states:

The Board is empowered to review decisions made by Welfare Administrators and Directors of Income Maintenance of the Ministry of Community and Social Services on the eligibility of individuals for classes of assistance and benefits as prescribed by the regulations made under their respective enabling statutes.

In reviewing these decisions the Board deals with personal information related to eligibility for social service or welfare benefits.

The cases heard before the Board were appeals from a decision of the Regional Municipality of Waterloo (the Municipality) to either cancel or suspend the social assistance benefits of two individuals. These individuals appealed the decision of the Municipality to the Board. The oral testimony given at the hearings is recorded in the Board member's notes and presumably was used by the Board to arrive at the decision ordering that the benefits be reinstated.

In these circumstances, it is my view that the personal information contained in the notes "relates to eligibility for social service or welfare benefits ..." in that it was used to determine whether the two individuals should qualify to continue to receive the benefits which had been terminated. I believe that the sensitivity of such information is confirmed by the fact that pursuant to section 16(1) of the Ministry of Community and Social Services Act, the enabling legislation of the Board, Board hearings are held in camera.

Therefore, I find that the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(c) of the Act have been established.

The only way in which a section 21(3) presumption can be overcome 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 ambit of this provision.

The appellant argues that his status as a public official who has responsibility for administering social assistance should be a factor under section 21(2) of the Act which would weigh in favour of disclosure of the records. Even if I were to determine this was a relevant factor, it would not be sufficient to overcome the section 21(3) presumption (Order M-170).

Moreover, previous orders of the Commissioner's office have determined that the status of the requester cannot be a relevant factor in determining whether disclosure of personal information

will constitute an unjustified invasion of personal privacy (Order M-96). In addition, the Act contemplates that where access is given to a requester, it is access to the world (Order P-164).

Having reviewed the records and considered the representations of the parties, I find that the presumption in section 21(3)(c) of the Act applies and that the records are properly exempt under section 21 of the Act. Therefore, I need not consider the application of sections 21(3)(a), (d) and (f).

The appellant submits that section 23 of the Act applies in the circumstances of this appeal. This section states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

There are certain requirements in section 23 of the Act which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption, as distinct from the value of the disclosure of the particular record in question (Order 16).

While the burden of proof as to whether an exemption applies falls on the institution, the Act is silent as to who bears the onus of proof in respect of section 23. Where the application of section 23 to a record has been raised by an appellant, it is my view that the burden of proof cannot rest wholly on the appellant, where he or she has not had the benefit of reviewing the record before making his or her submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom, if ever, be met by the appellant.

The Board states:

The Board also is very strongly of the view that given the nature of Board member's notes, it is difficult to see what public interest would be served by their disclosure. It is submitted that the likely result of disclosure would be to provide confusing or misleading information and to undermine the integrity of the decision making process.

The appellant submits that:

The request for the above notes was an attempt to clarify the information [questions asked by the Board member and the responses] to determine if the appropriate decision was made. As the region is lawfully charged with ensuring that public monies are properly distributed through the social assistance, it is important to have this information as we represent the public interest.

I agree that the appellant, in his professional capacity, represents the interests of the public in ensuring that taxpayers' monies are properly spent on social assistance. However, I believe that the public interest has already been satisfied in this case. The appellant was in attendance at the hearings. As a party to the hearings he was entitled to receive a copy of the Board's decisions. Based on this information, if he feels that the public interest is not being served by the decisions reached by the Board, he may apply for a reconsideration of the decisions by the Board or, in the appropriate circumstances, appeal to the Divisional Court.

Therefore, in the circumstances of this appeal, I do not find that there exists a compelling public interest in the disclosure of the personal information which overrides the purpose of the section 21 exemption.

**ORDER:**

I uphold the Board's decision.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ March 21, 1994