



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

# **ORDER P-665**

**Appeals P-9300024 and P-9300171**

**Ministry of the Solicitor General and Correctional Services**



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# ORDER

## BACKGROUND:

The Ministry of Correctional Services (now the Ministry of the Solicitor General and Correctional Services) (the Ministry) received two separate requests under the Freedom of Information and Protection of Privacy Act (the Act) from a union representative on behalf of a Corrections Officer who had been dismissed from her job.

In the first application (which resulted in Appeal Number P-9300024), the requester sought access to (1) the Corrections Officer's Performance, Planning and Review (PPR) file, (2) her personnel file and (3) any other reports, correspondence or documents relating to her dismissal.

In the second request (which produced Appeal Number P-9300171), the union official asked to receive (1) the report of a Ministry inspector who investigated the incident, (2) any relevant staff or manager's reports and (3) any other reports, investigations, facts or relevant files pertaining to the dismissal.

In its decision letter regarding Appeal Number P-9300024, the Ministry indicated that it had responded to the first two components of the request and that only the third part (reports or investigations relating to the dismissal) was still outstanding. The Ministry then located three occurrence reports which were responsive to the request and granted the requester access to her own statement. The Ministry, however, withheld the remaining two occurrence reports in full based on the exemption contained in section 49(b) of the Act (invasion of privacy).

With respect to Appeal Number P-9300171, the Ministry indicated that the inspector's report had not been prepared at the time that the application was made and, hence, that such a document fell outside the scope of the request. The Ministry then identified two occurrence reports that responded to the request but denied access to these documents under sections 49(b) and 14(2)(d) of the Act.

The requester appealed the Ministry's decisions to withhold the four occurrence reports from disclosure.

The mediation of these appeals 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 three Corrections Officers who authored the various occurrence reports. Representations were received from the appellant, the Ministry and two of the Corrections Officers. In its representations, the Ministry withdrew its reliance upon section 14(2)(d) of the Act.

As indicated previously, the records at issue in these appeals consist of four occurrence reports. The two reports dated November 19, 1992 relate to Appeal Number P-9300024 while the reports dated December 29 and 30, 1992, respectively, pertain to Appeal Number P-9300171.

## ISSUES:

The issues arising in these appeals are:

- A. Whether the information contained in the occurrence reports qualifies as "personal information" as defined in section 2(1) of the Act.
- B. Whether the discretionary exemption provided by section 49(b) of the Act applies to the personal information contained in the occurrence reports.

## **SUBMISSIONS/CONCLUSIONS:**

### **ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.**

"Personal information" is defined in section 2(1) of the Act, in part, to mean "recorded information about an identifiable individual". I have reviewed the four occurrence reports and find that each record contains personal information about the appellant and other identifiable individuals.

### **ISSUE B: Whether the discretionary exemption provided by section 49(b) of the Act applies to the personal information contained in the occurrence reports.**

Under Issue A, I found that the four occurrence reports contain the personal information of the appellant and other named individuals. Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a Ministry. Section 49 provides a number of exceptions to this general right of access, one of which is found in section 49(b) of the Act.

Under this section, where a record contains the personal information of both the appellant and other individuals and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the requester access to the information.

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. I have carefully reviewed the contents of the occurrence reports and find that neither sections 21(3) nor (4) apply to the personal information at issue.

If none of the presumptions in section 21(3) of the Act are applicable, the Ministry must consider the relevance of the factors listed in section 21(2) of the Act as well as all other circumstances that apply in the case.

In its submissions, the Ministry states that sections 21(2)(e) and (h) apply to the facts of these appeals. The appellant, on the other hand, contends that both sections 21(2)(d) and (e) are factors which weigh in favour of disclosing the records. These provisions collectively state that:

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

For the purposes of these appeals, it will be sufficient for me to consider the application of sections 21(2)(d) and (e) to the personal information found in the records.

### **Unfair Exposure to Harm - Section 21(2)(e)**

By way of background, the Ministry indicates that, on November 12, 1992, a verbal confrontation occurred between the Corrections Officer who has made the access request (the appellant) and a fellow employee (Corrections Officer B). Following this incident, Corrections Officer B authored an occurrence report which is the first record at issue in Appeal Number P\_9300024. A third employee (Corrections Officer C) witnessed this incident and wrote the second occurrence report which is the subject of this appeal. Shortly after this altercation took place, the employment of the appellant was terminated.

On December 26, 1992, Corrections Officer C learned that an inmate at the detention centre possessed detailed knowledge of the incident. Corrections Officer C then consulted with a colleague (Corrections Officer D) about this potential breach of security. Both Corrections Officers C and D subsequently authored individual occurrence reports which are the subject of Appeal Number P-9300171.

The Ministry submits that, following the dismissal of the appellant, one or more of the authors of the occurrence reports were subjected to harassment and reprisals by some detention centre staff. This harassment continued until the appellant was reinstated following the settlement of grievance which she had initiated.

The Ministry argues that the release of the occurrence reports, at this point in time, would reopen old wounds and result in renewed harassment of the authors of the occurrence reports. The Ministry also describes how the three other Corrections Officers could be exposed to harm if other staff members refused to co-operate with them in their day to day duties. The Ministry then submits that such exposure to harm would be unfair because the Corrections Officers were required, as a term of their employment, to author the occurrence reports. Finally, the Ministry points out that the December occurrence reports relate only peripherally to the appellant.

The two Corrections Officers who submitted representations to the Commissioner's office agree that the disclosure of the occurrence reports at a time when relationships in the work place have returned to normal would be counter-productive.

The appellant also submits that section 21(2)(e) is a relevant consideration but that it should weigh in favour of disclosing the personal information. She takes this position because she has suffered the "ultimate pecuniary measure" when her employment was terminated.

In considering the appellant's representations, it is important to note that she subsequently regained her job. In any event, it has been held by the Commissioner's office that section 21(2)(e) is a factor which weighs in favour of protecting privacy interests rather than disclosing personal information (Order 180). I therefore do not accept the appellant's submissions on this point.

I have carefully reviewed the representations of the parties in conjunction with the records at issue. Based on the evidence before me, I find that the personal information contained in the occurrence reports, if disclosed, would unfairly expose the three Corrections Officers to harm. On this basis, I find that section 21(2)(e) of the Act is a consideration which weighs in favour of protecting the privacy interests of these individuals.

#### **Fair Determination of the Appellant's Rights - Section 21(2)(d)**

The appellant next submits that the consideration outlined in section 21(2)(d) of the Act (fair determination of the appellant's rights) supports the disclosure of the occurrence reports. In order for section 21(2)(d) to apply to the facts of a case, the party relying on this provision 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 to which the appellant is seeking access 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 have carefully reviewed the representations which have been provided to me. As indicated previously, the grievance which the appellant initiated has now been settled with the result that she has been reinstated. On this basis, there is no longer an existing or contemplated "proceeding" for the purposes of the second part of the section 21(2)(d). Since this aspect of the test has not been satisfied, the result is that section 21(2)(d) is not a relevant factor in the circumstances of this appeal.

To summarize, therefore, I have found that one consideration found in section 21(2) of the Act (unfair exposure to harm) favours protecting the privacy interests of the three Correctional Officers and that there do not exist any factors under this section which weigh in favour of releasing the personal information found in the occurrence reports. On this basis, I find that the

disclosure of these records **would** constitute an unjustified invasion of the personal privacy of the three Correctional Officers and that the exemption provided by section 49(b) of the Act applies to the records.

I have reviewed the Ministry's exercise of discretion under section 49(b) in refusing to disclose the personal information referred to in the records. I find nothing improper in the manner in which this discretion was exercised in the circumstances of this case.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Irwin Glasberg  
Assistant Commissioner

\_\_\_\_\_ April 27, 1994