



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

ORDER P-732

Appeal P_9300493

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested copies of records from the Ministry of the Solicitor General and Correctional Services (the Ministry). The request contained three separate parts and was treated as three requests by the Ministry. This order relates to only one part of the request, since the other parts are the subject of separate appeal files.

The part of the request which is the subject of this appeal was for a copy of the appellant's personnel file, and in particular any information related to her employment history, her complaints of harassment at two named correctional facilities, and her allegations regarding management's response to those complaints.

The records at issue are the portions of the following records which were withheld from disclosure:

- a letter to the superintendent of a correctional facility where the appellant was employed (Record 5),
- four occurrence reports written by Ministry staff, including one written by the appellant (Records 6, 7, 8 and 10), and
- a memorandum to staff from the superintendent at a correctional facility where the appellant was employed (Record 9).

In its representations, the Ministry advises that it no longer objects to the release of the undisclosed information in Record 9. I have reviewed this record and determined that no mandatory exemption applies to it. Accordingly, Record 9 should be disclosed to the appellant in its entirety.

The Ministry relies on the following exemption in denying access to the undisclosed portions of Records 5, 6, 7, 8 and 10:

- invasion of privacy - section 49(b).

A Notice of Inquiry was provided to the parties to the appeal. Representations were received from the Ministry. In representations submitted for two appeals relating to other parts of the request, the appellant's solicitor has advised that no representations will be made on behalf of the appellant regarding this appeal.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, as "recorded information about an identifiable individual". I have reviewed the records, and I find that the undisclosed portions qualify as "personal information". In my view, the personal information in these records pertains to the appellant and other individuals.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that 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. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

In its representations, the Ministry states that the undisclosed portions of Records 5 and 6 consist primarily of medical information relating to an inmate. Therefore, the Ministry submits that the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 21(3)(a).

The Ministry further states that the undisclosed information in all the records is highly sensitive as it contains the names of inmates and provides information relating to their incarceration (Order P-597). This factor is set out in section 21(2)(f).

Having reviewed the evidence before me, I have made the following findings:

- (1) The undisclosed portions of Record 5 and 6 relate to the medical history of an individual other than the appellant. Therefore, the presumed unjustified invasion of personal privacy found in section 21(3)(a) applies to these parts of Records 5 and 6.

Record 6 was prepared by the appellant and she is therefore aware of its contents. In the circumstances of this appeal, given the nature of the undisclosed information, I find that the fact that the appellant prepared this record does not entitle her to any additional disclosure of its contents.

- (2) Section 21(4) does not pertain to any of the information in Records 5 and 6 to which section 21(3)(a) applies, and the appellant has not claimed that section 23 applies to this information.
- (3) Section 21(2)(f) is a relevant consideration in relation to Records 5, 6, 7, 8 and 10, since disclosure could reasonably be expected to cause excessive personal distress to other individuals (Order P-434). This factor weighs in favour of privacy protection.

- (4) I find that disclosure of the undisclosed portions of Records 5, 6, 7, 8 and 10 would constitute an unjustified invasion of the personal privacy of individuals other than the appellant. Accordingly, the exemption in section 49(b) applies.

ORDER:

1. I uphold the Ministry's decision to deny access to the undisclosed portions of Records 5, 6, 7, 8 and 10.
2. I order the Ministry to disclose Record 9 in its entirety to the appellant within fifteen (15) days after the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

John Higgins
Inquiry Officer

July 27, 1994