



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-747

Appeal P_9300509

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 Ministry of the Solicitor General and Correctional Services (the Ministry) received a request for copies of employment records and all other files relating to the requester. Partial access to the records was granted.

The requester appealed the Ministry's decision not to disclose the records to him in their entirety. He also claimed that further responsive records exist.

The majority of the requested records were disclosed to the appellant during mediation of the appeal. The following is the only information remaining at issue:

- Page 284: name of an employee who was absent from work (a portion of a work schedule)
- Page 302: period of time an employee was absent due to illness (a portion of an occurrence report written about the appellant)
- Page 317: names and numbers of two individuals in a correctional facility (a portion of an occurrence report written by the appellant)

The Ministry relies on the following exemption to deny access to this information:

- invasion of privacy - section 49(b)

A Notice of Inquiry was sent to both the appellant and to the Ministry. Representations were received from the Ministry only.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any information relating to the medical or employment history of the individual and the individual's name where it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual.

I find that the information at issue in this appeal constitutes personal information. Given the context in which it appears in the records, I am of the view that it relates to both the appellant and other identifiable individuals.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government organization. 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 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.

Having reviewed the representations of the Ministry and the personal information, I have made the following findings:

- (1) The undisclosed portion of Page 284 contains the employment history of an individual other than the appellant. Therefore, the presumed unjustified invasion of personal privacy found in section 21(3)(d) applies.
- (2) The information at issue on Page 302 relates to the medical history of an individual other than the appellant. For this reason, the presumed unjustified invasion of personal privacy found in section 21(3)(a) applies.
- (3) Neither the information on Page 284, nor that on Page 302 falls within the ambit of section 21(4) of the Act. Nor has the appellant claimed that the public interest override in section 23 of the Act applies to this personal information.
- (4) The information contained in the undisclosed portion of Page 317 is highly sensitive (section 21(2)(f)). This is a factor which weighs in favour of privacy protection. The appellant has not claimed that there are any factors in section 21(2) or otherwise that weigh in favour of disclosure. Accordingly, the disclosure of this highly sensitive information would result in an unjustified invasion of the personal privacy of the individuals in the correctional facility.
- (5) Accordingly, the personal information at issue on Pages 284, 302 and 317 is exempt from disclosure pursuant to section 49(b) of the Act.

REASONABLENESS OF SEARCH

The Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However in order to properly discharge its obligations under the Act, the Ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request (Order M-275).

The appellant believes that a "slush" file is maintained by the Superintendent of a named correctional facility (the facility). The appellant alleges that this file is kept separate from personnel files and contains information on employees, including occurrence reports prepared by and about the appellant.

As part of its representations, the Ministry submitted an affidavit sworn by the Superintendent of the facility. The Superintendent indicates that she has no knowledge of the existence of "slush" files on the employees of the facility.

Where a requester provides sufficient detail about the records that she or he is seeking, it is my responsibility to ensure that the Ministry has made a reasonable effort to identify and to locate records responsive to the request. In this case, the appellant alleges that certain files containing personal information about him as well as other employees are maintained by the Superintendent. The Superintendent has sworn an affidavit attesting to the fact that she does **not** maintain any such "slush" files.

Based on the above, I am satisfied that the Ministry has conducted a reasonable search to locate records responsive to the appellant's request as far as the possible existence of a "slush file" is concerned.

However, in her affidavit, the Superintendent does acknowledge that she maintains operational records that include occurrence reports filed by date, not by the name of the employee. Given the very broad nature of the appellant's request, I am satisfied that some of the information contained in these reports would be responsive to the request.

The representations of the Ministry indicate that it did not conduct a search of the occurrence reports. However, the Ministry did identify two occurrence reports as being responsive to the request. As I have previously indicated, Page 302 is a page from an occurrence report describing an incident involving the appellant. It was written by another Ministry employee. The appellant wrote the occurrence report of which Page 317 is an excerpt.

It is, therefore, my view that the Ministry has not conducted a reasonable search for any additional responsive records that may exist in the occurrence report files. As these are filed by date, and the appellant's request spans some eight years, I believe that this is a situation in which the appellant has an obligation to provide the Ministry with any information in his possession that would assist the Ministry in locating the records he is requesting.

ORDER:

1. I uphold the Ministry's decision with respect to Pages 284, 302 and 317.
2. I order the Ministry, after consultation with the appellant, to conduct a search for responsive records located in its occurrence report files and to advise the appellant of the results of this search within thirty (30) days after the date of this order.

3. In the event that further records are located as a result of this search, I order the Ministry to provide an access decision to the appellant, in the form contemplated by sections 26 and 29 of the Act, within thirty (30) days of the date of this order and without recourse to a time extension.

4. In order to verify compliance with Provisions 2 and 3 of this order, I order the Ministry to provide me with copies of the correspondence referred to in these provisions within thirty-five (35) days after the date of this order. These should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ August 30, 1994