



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

ORDER P-679

Appeal P-9300576

Archives of Ontario



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ORDER

BACKGROUND:

The Archives of Ontario (the Archives) received a request under the Freedom of Information and Protection of Privacy Act (the Act) from a daughter for access to various records relating to her late father. The daughter, who was adopted when she was very young, only recently learned the identity of her biological father. In her request, the daughter specifically sought information relating to her father's detention in a particular correctional facility.

The Archives located two "jail register entries" which were responsive to the request but denied access to these records in their entirety under section 21 of the Act (invasion of another individual's privacy). In its decision letter, the Archives also advised the daughter that the two documents contained the following information about her father: his age, address, occupation, religion, marital status, the offence committed, the length of his sentence, his committal date and his discharge date. The daughter appealed the decision of the Archives to deny access to the records to the Commissioner's office.

The mediation of this appeal was not successful and notice that an inquiry was being conducted to review the decision of the Archives was sent to the Archives and the daughter. Representations were received from the Archives and from the daughter both personally and through her representative.

ISSUES:

The issues arising in this appeal are the following:

- 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, whether the mandatory exemption provided by section 21 of the Act applies to the personal information contained in the records.

DISCUSSION:

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

Under section 2(1) of the Act, personal information is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the two records at issue and find that they both contain personal information relating to the father.

Section 2(2) provides that personal information does not include information about an individual who has been dead for more than 30 years. Since the father died 11 years ago, section 2(2) does not apply to the circumstances of this case.

I also find that the daughter is not the personal representative of the deceased (that is, his executor or administrator) for the purposes of section 66(a) of the Act. Accordingly, the daughter's request for information, as it relates to her father's personal information, must be determined in accordance with section 21 of the Act.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to the personal information contained in the records.

Section 21(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than the individual to whom the information relates. There are a number of exceptions to this rule, one of which is found in section 21(1)(f) of the Act. This section provides that an institution must refuse to release personal information of other individuals except if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of the personal information would constitute an unjustified invasion of personal privacy. I have carefully reviewed the contents of the two records and find that neither section 21(3) nor 21(4) apply to the personal information in question.

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

In her representations, the daughter relies on three unlisted factors which she submits weigh in favour of releasing her father's personal information to her. First, she has drawn my attention to section 42(i) of the Act which appears in the privacy protection provisions of the legislation. This section permits an institution to disclose personal information in compassionate circumstances to facilitate contact with a next of kin or friend of an individual who is injured, ill or deceased. Second, the daughter contends that her status as a close relative means that she should enjoy a special right of access to her father's personal information. Finally, she states that the fact that her father has been dead for 11 years should diminish his privacy rights in the information in question.

The Archives, on the other hand, relies on two considerations outlined in section 21(2) of the Act to support its position that the father's privacy rights should be protected. These are section 21(2)(f) (highly sensitive information) and section 21(2)(i) (unfair damage to the reputation of the person to whom the personal information relates).

I will first examine the considerations outlined in section 21(2) and any other relevant circumstances which weigh in favour of protecting the privacy interests of the father.

Highly Sensitive Information - Section 21(2)(f)

The Archives submits that information about an individual's conviction for certain categories of offences is inherently sensitive in nature. On this basis, any records which refer to this fact should also be regarded as highly sensitive.

I have carefully reviewed these representations in conjunction with the records at issue. Based on the facts of this case, I find that the excerpts in the records which describe the offence which the father committed represent highly sensitive personal information. I find, however, that the information contained in the documents which relates to the father's personal characteristics (e.g. his sex, eye colour, marital status, complexion) and to his place of residence cannot be characterized in this fashion.

Unfair Damage to Reputation - Section 21(2)(i)

In its representations, the Archives submits that the consideration raised in section 21(2)(i) of the Act (unfair damage to the reputation of the father) applies to the personal information in question.

In order for me to find that this provision is relevant, I must be persuaded that the disclosure of the father's personal information would unfairly damage his reputation. In the present case, the father was convicted of having committed a criminal offence and subsequently served a prison term. In my view, this set of facts, without further evidence, does not suggest that the disclosure of the personal information contained in the records would **unfairly** damage the father's reputation. Accordingly, I find that section 21(2)(i) is not a relevant factor in the circumstances of this appeal.

To summarize, therefore, I have found that one consideration set out in section 21(2) of the Act (highly sensitive information) favours the protection of the personal information in the records about the crime for which the father was convicted.

I will now explore the considerations which weigh in favour of disclosing the personal information contained in the records.

The Diminishment of Privacy Interests after Death

In her representations, the daughter submits that the considerations discussed in Order M-50 should apply in the circumstances of this appeal.

In that order, Commissioner Tom Wright noted that, under section 2(2) of the Act, the personal information of a deceased individual retains this status for 30 years after the person dies. He went on to indicate, however, that where an individual has been dead for less than this period of time, the privacy interests of the individual in his or her personal information may be said to diminish. Commissioner Wright concluded that, while the disclosure of personal information might constitute an unjustified invasion of personal privacy while a person was alive, its subsequent disclosure, in certain circumstances, might not be viewed in the same light.

In the present case, the father has been dead for almost 11 years. In addition, the information which the daughter seeks was tabulated in 1940 and is, therefore, more than 50 years old. Given the circumstances of this appeal, I believe that this is a case where the father's right to privacy

has diminished following his death and the subsequent passage of time. This factor, in turn, weighs in favour of disclosing the personal information to the daughter.

Family Considerations

In her representations, the daughter states that, in determining whether the personal information should be disclosed to her, the Act contemplates some exercise of discretion where the information relates to family members.

The essence of the daughter's submissions is that, because she is related to her deceased father, she should enjoy a heightened or special right of access to his personal information. With the exception of the situations outlined in sections 66(a) and (c) of the Act (neither of which apply in the present case), a requester's status as a family member is not relevant in determining whether the requester should obtain access to another family member's personal information. This is the case because, under Part II of the Act, the disclosure of information to a requester is also considered to represent disclosure to the world (Order M-96).

On this basis, I cannot accept the daughter's argument that her status as a family member is a factor which is relevant to the disposition of this appeal.

The daughter also submits that the considerations outlined in section 42(i) of the Act are relevant in adjudicating the present appeal. This provision is found in Part III of the Act which contains the privacy protection provisions of the legislation. Section 42(i) prescribes that a government institution must not disclose personal information in its custody except in compassionate circumstances to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased.

In Order M-96, former Assistant Commissioner Tom Mitchinson commented on the relationship between section 32 of the Municipal Freedom of Information and Protection of Privacy Act (the equivalent of section 42 of the Act) and the access provisions contained in Part I of that Act. He there stated that:

This Part [of the Act] establishes a set of rules governing the collection, retention, use and disclosure of personal information by institutions in the course of administering their public responsibilities. Section 32 prohibits disclosure of personal information except in certain circumstances; it does not create a right of access. The [appellant's] request ... was made under Part I of the Act [the equivalent of Part II of the provincial Act], and this appeal concerns the Board's decision to deny access. In my view, the considerations contained in Part II of the Act [the equivalent of Part III of the provincial Act], and specifically the factors listed in section 32, are not relevant to an access request made under Part I.

I agree with this analysis and adopt it for the purposes of this appeal.

The result is that the wording of section 42(i) of the Act is not a relevant consideration in determining whether the release of the father's personal information constitutes an unjustified invasion of his personal privacy.

Should the Personal Information Be Released?

To summarize, I have found that one consideration set out in section 21(2) of the Act (highly sensitive information) weighs in favour of protecting the personal information found in the records about the offence which the father committed. I have also determined that one unlisted factor (the diminishment of privacy interests after death) favours the disclosure of the personal information found in the documents. Following a careful balancing of these considerations, I have concluded that the disclosure of the personal information contained in the records, with the exception of the information about the nature of the offence which the father committed, would **not** represent an unjustified invasion of the father's personal privacy. This information should, therefore, be disclosed to the daughter.

To assist the Archives, I have highlighted the information which should **not** be disclosed to the daughter in yellow on the copy of the records which is being sent to the Freedom of Information Co-ordinator for the Archives.

ORDER:

1. I order the Archives to disclose to the daughter within (fifteen) 15 days of the date of this order the portions of the records which are **not** highlighted in the copy of the records which is being forwarded to the Archives with this order.
2. In order to verify compliance with this order, I order the Archives to provide me with a copy of the records which are disclosed to the appellant under Provision 1, **only** upon request.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ May 13, 1994