



Information and Privacy
Commissioner/Ontario

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

ORDER P-862

Appeal P-9400567

Ministry of Community and Social 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 Community and Social Services (the Ministry) received a request for access to all information contained in the requester's Crown Ward File. The Ministry granted partial access to the records and relied on the following exemption to deny access:

- invasion of privacy - section 21(1)

The requester appealed the denial of access. On November 1, 1994 a settlement agreement was reached between the parties to the appeal. By November 28, 1994, however, the Ministry had not fulfilled the agreement, despite repeated assurances that it was its intention to do so. Accordingly, the Appeals Officer informed the parties that the appeal would be moving into the inquiry stage.

The records at issue consist of various letters and other documents covering the time period of February, 1961 to September, 1972. The Ministry numbered the records from page 1 to 53 and I will refer to this scheme throughout this order (pages 24, 42, 44, 46, 51 and 53 had been previously disclosed to the appellant in their entirety).

A Notice of Inquiry was provided to the appellant and the Ministry. Because it appeared that some pages of the records contained the personal information of the appellant as well as other individuals, the Appeals Officer asked for representations on the possible application of section 49(b). This section provides a discretionary exemption in situations where an individual has requested access to his or her own personal information, and disclosure would constitute an unjustified invasion of the personal privacy of another individual or individuals. No representations were received from either party.

As representations had not been received from the Ministry and there had been no indication that the original settlement agreement had been carried out, the Appeals Officer again contacted the Ministry to ascertain its intentions. The Ministry's Policy Analyst with carriage of the file informed the Appeals Officer that representations would not be forthcoming as the Ministry intended on proceeding with the original settlement but provided no explanation as to why this had not yet been accomplished. The Analyst further informed the Appeals Officer that she would look into the delay.

On January 4, 1995, as the Appeals Officer received no further information from the Ministry, he made a further follow up telephone call to the Analyst and left a message that she contact him. This call went unanswered.

Accordingly, due to the Ministry's failure, without explanation, to satisfy the terms of the agreed upon settlement or, in the alternative, to provide me with representations in response to this inquiry, I will proceed to issue my order, in the absence of such, disposing of the outstanding issues of this appeal.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual. I have reviewed the records at issue and I find that it satisfies the definition of personal information. In my view, pages 1-3, 7, 10, 12, 14, 16, 18-23, 25-41, 43, 45, 47-50 and 52 contain the personal information of the appellant and other identifiable individuals and pages 4-6, 8-9, 11, 13, 15 and 17 contain the personal information of individuals other than the appellant.

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, the Ministry must weigh the requester's right to his/her own personal information against the privacy interests of other individuals. If 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 that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in 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 if 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 in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

As stated above, I have been provided with no representations from either party to this appeal.

Having reviewed the records at issue, I have made the following findings:

- (1) Pages 4-6, 8-9, 11, 13, 15 and 17 relate solely to the personal information of individuals other than the appellant. Section 21 of the Act is a mandatory exemption and since I have not been provided with any representations which favour the disclosure of the information contained in these pages they should not be disclosed to the appellant. Accordingly, I find that section 21(1) applies to these pages of the records.
- (2) Pages 3, 7, 10, 12, 14, 16, 18 and 19 contain the personal information of the appellant and other identifiable individuals. These pages have been withheld in their entirety. In balancing the interests of the appellant in disclosure of the personal information and the privacy interests of the other

individuals, I find that disclosure of the personal information of individuals other than the appellant on these pages would constitute an unjustified invasion of personal privacy. In the circumstances of this appeal, in my view, it is appropriate to apply section 49(b) to this information. I have highlighted this information on the copy of these pages which accompanies the Ministry's copy of this order. The highlighted portions indicate which parts of the records are **not** to be disclosed.

ORDER:

1. I order the Ministry to disclose to the appellant pages 3, 7, 10, 12, 14, 16, 18 and 19 in accordance with the highlighted copy of these pages provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order, within fifteen (15) days of the date of this order. The highlighted portions indicate those portions which are **not** to be disclosed.
2. I order the Ministry not to disclose pages 4-6, 8-9, 11, 13, 15 and 17, the severed portions of pages 1-2, 20-23, 24-41, 43, 45, 47-50 and 52 and the highlighted portions of pages 3, 7, 10, 12, 14, 16, 18 and 19.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the pages which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ February 9, 1995