



Information and Privacy  
Commissioner/Ontario

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

## **ORDER P-828**

Appeal P-9400549

Ministry of Community and Social Services



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Téléc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested a copy of the final report that resulted from an investigation conducted in 1993-1994 by the Ministry of Community and Social Services (the Ministry) of a home for the developmentally handicapped (the Home). The report is a 12-page document dated January 28, 1994.

The Home is publicly funded through the Ministry. The investigation was conducted to determine if there were concerns about the conduct of a former employee. The investigation also examined the processes in place within the organization and the Ministry to respond to various allegations.

The requester is a newspaper reporter with an interest in the operations of the Home.

The Ministry relies on the following exemption to withhold the entire report:

- invasion of privacy - section 21(1).

The requester appealed the Ministry's decision denying her access to the report. During mediation of the appeal, the appellant indicated that she was not seeking access to the names of clients or any other individuals mentioned in the report. She also maintained that there exists a compelling public interest in the disclosure of the balance of the report.

A Notice of Inquiry was sent to the Ministry, the appellant and three individuals who appeared to have an interest in the disclosure of the information contained in the report (the affected persons). For ease of reference, I will refer to these individuals as affected persons 1, 2 and 3. Representations were received from the appellant, the Ministry and affected persons 1 and 2. The former employee, who would also have an interest in the disclosure of the information contained in the report could not be located for the purposes of notification.

## **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 identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

The report does not contain the names of any individuals. As I have noted, the appellant does not seek access to names. However, the report does contain information which could serve to identify all three affected persons as well as the former employee. The report also contains some information related to affected persons 1 and 2 in their professional capacity and thus does not qualify as their personal

information.

The report does not contain the personal information of any clients.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

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 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.

The Ministry maintains that some of the personal information about the former employee relates to employment history and personnel evaluations and thus the presumptions in sections 21(3)(d) and (g) apply.

The Ministry also suggests that these presumptions apply as the report contains the "personnel history" of affected person 3.

I do not agree. The employment-related information may be more accurately characterized as a job description, rather than employment "history". The references in the report to work performance merely discuss documentation and follow-up and do not contain any information of an evaluative nature. Therefore, I find that none of the presumptions in section 21(3) of the Act apply.

As far as the factors set out in section 21(2) are concerned, the Ministry claims that the following considerations weigh in favour of privacy protection:

- the personal information is highly sensitive - section 21(2)(f);
- the personal information has been supplied by the individual to whom the personal information relates in confidence - section 21(2)(h); and
- the disclosure would unfairly damage the reputation of any person referred to in the record - section 21(2)(i).

The appellant maintains that disclosure of at least some of the report is desirable for the purpose of subjecting the activities of the government of Ontario and its agencies to public scrutiny (section 21(2)(a)) and that disclosure may promote public health and safety in "the spirit" of section 21(2)(b). She also claims that section 21(2)(i) is inapplicable as the damage to the reputation of the former employee has already

occurred in view of the public reports on his activities.

I will first consider the personal information of affected person 3. I find that it is highly sensitive and that disclosure would unfairly damage her reputation. I have, however, been provided with no evidence that she supplied the information contained in the report in confidence under section 21(2)(h) of the Act.

I will now consider the personal information of the former employee. The Ministry could not and did not contact this individual during the investigation which resulted in the creation of the report. Accordingly, section 21(2)(h) has no application as he himself did not supply his personal information. In addition, I do not believe that disclosure would **unfairly** damage the reputation of this individual as much of it is already in the public domain and has already been admitted to publicly by him. However, I do believe that disclosure of certain portions of his personal information would cause excessive personal distress and thus can be considered to be "highly sensitive" within the meaning of section 21(2)(f) of the Act. This is a factor which weighs in favour of privacy interests.

As I have indicated, much of the information in the report related to affected persons 1 and 2 relates to their actions in their employment capacities and thus does not constitute their personal information. I agree with the submissions of these individuals that the primary purpose of the report was to review the conduct of the former employee. However, in my view this is not a factor which is relevant when determining whether their personal information should be disclosed. Rather, I would agree that portions of their personal information may be considered to be highly sensitive. I have been provided with no evidence to indicate that disclosure would unfairly damage their reputation.

To summarize the factors weighing in favour of privacy protection, I have found that the personal information of affected person 3 is highly sensitive and that disclosure would unfairly damage her reputation. I have also found that portions of the personal information of the former employee and affected persons 2 and 3 is highly sensitive.

I will now address those factors favouring disclosure of personal information.

In order for section 21(2)(a) to apply in the circumstances of an appeal, it must be established through evidence provided by the appellant, and following a review of the relevant records, that disclosure of the personal information found in these records is desirable for the purpose of subjecting the activities of the institution to public scrutiny.

In this case, the appellant's representations indicate that the Home, as a transfer payment agency, receives almost all of its funding from the taxpayers of Ontario. The Home is charged with providing care for some of the most vulnerable members of society, developmentally disabled adults.

Serious allegations had been raised not only about the propriety of the activities of the former employee, but also about the administrative operations of the Home as related to this individual. Issues such as the Home's hiring practices, procedures concerning the reporting of suspected problems and the effectiveness of

Ministry policies which were to regulate the Home were all matters of concern which arose as a result of the actions of the former employee.

As a result of the situation involving the former employee, the Home's Board of Directors asked the Ministry to conduct an investigation. This fact was publicly announced in the press. A spokesperson for the Home was quoted as providing the following explanation as to why the Ministry had been called upon to investigate:

... [The Board] felt it was their duty to call in police and the ministry ... We were very concerned that there be an arms-length review done ... to determine whether any clients ... were affected.

We wanted there to be the perception, the clear understanding, that it wasn't an inside cover-up. There was no attempt to hide any facts on this issue.

To date, the results of the investigation have not been revealed.

In my view, based on the relationship between the Home and the Ministry, the nature of the operations of the Home, the seriousness of the allegations and the fact that it is critical that such incidents not be permitted to recur in the future, disclosure of the personal information of the former employee and that of affected persons 1 and 2 is desirable for the purpose of subjecting the activities of the Ministry in investigating these concerns to public scrutiny.

I am mindful of the fact that some of the recommendations contained in the report address issues directly related to the operation of the Home. However, much of the report deals with accountability for public funds, the reporting relationships between the Home and the Ministry and the manner in which the Home followed or did not follow certain policies and directives of the Ministry. In my view, these are all matters which should be disclosed in order that the public can be satisfied that the Ministry fulfilled its investigatory function under section 6(d) of the Ministry of Community and Social Services Act in circumstances in which the Ministry had previously announced that it was to undertake the review.

Accordingly, I find that section 21(2)(a) is a relevant consideration favouring disclosure in the circumstances of this appeal. However, this consideration only applies to the personal information of affected persons 1 and 2 and that of the former employee. In my view, disclosure of the personal information of affected person 3 is not necessary in order to further the aims of public scrutiny of the institution. The personal information of this individual is included in the report as an example of a situation where accountability for public funds should be more closely monitored. Her actions have not been questioned.

As far as section 21(2)(b) is concerned, I find that the appellant has provided no evidence to support the application of this factor.

To summarize, I have found that one consideration set out in section 21(2) of the Act (public scrutiny of the institution) favours the disclosure of the personal information of the former employee and affected persons 1 and 2, whereas a competing factor (the highly sensitive nature of some of the personal information) weighs in favour of protecting their privacy interests. I have found that the personal information of affected person 3 is also highly sensitive and that its disclosure would unfairly damage her reputation. In addition, I have found no considerations which favour the disclosure of her personal information.

After balancing the competing interests which arise in this case, I find that the need to subject the activities of the Ministry and one of its agencies to public scrutiny outweighs the need to protect the privacy interests of the former employee and affected persons 1 and 2. On this basis, I find that the release of the personal information of these individuals would not constitute an unjustified invasion of personal privacy. Accordingly, this information should be disclosed.

There are no considerations weighing in favour of disclosing the personal information of affected person 3 and it is, therefore, exempt pursuant to section 21(1) of the Act.

### **COMPELLING PUBLIC INTEREST**

The appellant also submits that there exists a compelling public interest in the disclosure of the records under section 23 of the Act. In order for this provision to apply, two requirements must be met. First, there must be a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption which otherwise applies to the records.

The reporter believes that the records should be disclosed for a number of reasons. She indicates that the families of the individuals who received services at the Home have not been apprised of the results of the Ministry investigation. She also maintains that the public, which funds the Home, has a right to know how well the government was overseeing the care of the individuals at the home. Moreover, she believes that public debate would be fostered by disclosure of the records; debate which would lead to improved care at both the Home and similar facilities in the province.

In addressing this issue, it is important to note that the only information I have held to be exempt under section 21(1) of the Act is that of affected person 3. In my view, the disclosure of the balance of the report will provide the appellant with sufficient information to address the concerns which I have listed above.

On this basis, I find that (1) there does not exist a compelling public interest in the release of the remainder of the information found in the report and (2) in any event, such a compelling public interest would not clearly outweigh the purpose of the invasion of privacy exemption. Accordingly, section 23 does not apply in the circumstances of this appeal.

### **ORDER:**

1. I order the Ministry to disclose the record to the appellant in accordance with the highlighted copy of the record I have provided to the Freedom of Information and Privacy Co-ordinator of the Ministry with a copy of this order. The highlighted portions should **not** be disclosed.
2. I order the Ministry to disclose the non-highlighted portions of the record to the appellant within thirty-five (35) days of the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
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 record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_  
January 9, 1995