



Information and Privacy
Commissioner/Ontario

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

ORDER P-866

Appeal P-9400626

Ministry of the Attorney General



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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 Attorney General (the Ministry) received a request for information pertaining to the requester within the Public Trustee's office. In particular, the requester seeks information relating to a power of attorney she holds for a named individual (the named individual).

The Ministry located records responsive to the request and granted partial access to them. The Ministry relies on the following exemptions in denying access to parts of the records:

- advice or recommendations - sections 13(1) and 49(a)
- invasion of privacy - section 21(1)

Because it appeared that all of the records at issue could contain the personal information of the appellant, the Commissioner's office also raised the possible application of section 49(b) of the Act (invasion of privacy).

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

PRELIMINARY MATTER:

RECORDS AT ISSUE

In its representations, the Ministry indicates that two records (Records 20 and 21) were erroneously included as responsive. It submits that these two records were generated subsequent to the date of the appellant's request and should, therefore, not be considered as responsive to the request.

As I indicated above, the appellant did not submit representations in this appeal. Nor has she responded to the Appeals Officer's attempts to discuss the issues in this appeal. In the absence of meaningful contact with the appellant, I have independently reviewed these two records and have considered the Ministry's representations.

Record 21 was generated as a result of and as part of the appellant's access request. In my view, this record is not responsive to this particular request as it falls outside the subject matter of the request.

Record 20, however, relates directly to the subject of the appellant's access request. The Ministry originally submitted this record, albeit in error, as part of the records at issue in this appeal. In addition, the Ministry has made an access decision with respect to it and has provided representations in support of the exemption claimed.

In the interests of finally determining all matters relating to the appellant's request, I am prepared to consider Record 20 as responsive to the request for the purposes of this appeal.

The records at issue in this appeal, therefore, consist of the following:

- an occupation therapy consultation report relating to the named individual (Record 15)
- a request for investigation relating to the named individual (Record 19)
- a memorandum from a Trust Officer to a Unit Manager in the Public Trustee's office relating to the appellant (Record 20).

DISCUSSION:

PERSONAL INFORMATION

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 records and I find that Records 15, 19 and 20 contain the personal information of **both** the appellant and the named individual.

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.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Under section 49(a) of the Act, the institution has the discretion to deny access to an individual's own personal information in instances where certain exemptions, such as the advice and recommendations exemption in section 13(1), would otherwise apply to that information.

The Ministry claims that section 13(1) applies to Record 20. In the following discussion, I will consider whether Record 20 qualifies for exemption under this section as a preliminary step in determining whether the exemption in section 49(a) applies.

ADVICE AND RECOMMENDATIONS

Section 13(1) of the Act states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information in the record must relate to a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process.

If it is found that a record falls within the provisions of section 13(1), the mandatory exceptions enumerated under section 13(2) of the Act must be considered before determining whether or not disclosure of a record can be refused.

As I indicated above, Record 20 is a memorandum from a Trust Officer to her Unit Manager. In its representations, the Ministry submits that the memorandum outlines a suggested course of action in how to proceed in a matter pertaining to the appellant.

I have carefully considered the Ministry's representations and have reviewed the contents of the memorandum. In my view, Record 20 falls within the exemption provided by section 13(1). I have reviewed the list of mandatory exceptions contained in section 13(2) and find that none of them apply in the circumstances of this appeal.

As I have found that Record 20 qualifies for exemption under section 13(1), it is exempt from disclosure under section 49(a).

INVASION OF PRIVACY

The Ministry claims that section 21 applies to Records 15 and 19. However, representations were made on the applicability of section 49(b) to the records as well. As I have found that Records 15 and 19 contain the personal information of both the appellant and the named individual, my analysis of the records will be done under section 49(b) of the Act.

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.

The Ministry claims that the information contained in Records 15 and 19 relates to the named individual's medical and psychological condition and outlines his financial position. The Ministry submits, therefore, that disclosure of this information would constitute a presumed unjustified invasion of personal privacy as provided in sections 21(3)(a) and 21(3)(f) respectively.

I have considered the Ministry's representations and have reviewed the contents of Records 15 and 19. I find that the vast majority of information contained in these two records pertains to the medical and psychological condition and/or financial situation of the named individual. I find, therefore, that disclosure of these records would constitute a presumed unjustified invasion of personal privacy under sections 21(3)(a) and (f).

I have considered the application of section 21(4) of the Act and find that none of the personal information falls within the scope of this provision. In addition, the appellant has not raised the application of section 23 of the Act.

I find that disclosure of Records 15 and 19 would constitute an unjustified invasion of the personal privacy of an individual other than the appellant. Accordingly, the records are properly exempt from disclosure under section 49(b) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by:

Laurel Cropley
Inquiry Officer

February 15, 1995