



Information and Privacy
Commissioner/Ontario

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

ORDER P-937

Appeal P-9400714

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 access to all documents relating to any complaints filed against the requester by a named individual (the complainant). As a result of the complaints, the Ministry undertook an investigation into the actions of the requester and three other employees (the other respondents). The investigation report concluded that there was no concrete evidence to substantiate the allegations.

Pursuant to section 28(1) of the Act, the Ministry notified four individuals whose interests might be affected by the disclosure of the requested information, namely the complainant and the three other respondents. The responses received by the Ministry from all of these individuals are not entirely clear. However, it appears that the three other respondents consented to the disclosure of the information related to them to the requester. At this time, the complainant consented to the disclosure of the information contained in the investigation report, conditional on the respondents providing their consent for similar disclosure to her. The complainant objected to the disclosure of the letter which was addressed to the requester.

The Ministry granted partial access to the records and denied access to the remaining records under the following exemption contained in the Act:

- invasion of privacy - section 49(b).

The requester appealed the Ministry's decision to deny access. A Notice of Inquiry was sent to the Ministry, the appellant and the complainant. Representations were received from the appellant and the complainant only. The Ministry advised that it would not be providing any submissions in this appeal.

The records at issue consist of:

- (1) a four-page letter of complaint written by the complainant and addressed to the appellant; and
- (2) portions of page two of the investigation report.

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 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.

I have reviewed the information contained in the records at issue and I find that they contain the personal information of the appellant and other identifiable individuals, including the complainant and the other respondents.

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 exemptions 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 Ministry determines that 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 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 which are relevant in the circumstances of the case.

The Ministry, in its decision letter denying access to the records at issue, claimed that disclosure of the information would unfairly expose the individuals to whom it relates to pecuniary or other harm (section 21(2)(e)). The Ministry also maintained that the information is highly sensitive (section 21(2)(f)). As I have previously noted, the Ministry has provided no submissions in support of these claims.

The appellant's position is that, at the time of the formal investigation, she was provided with an opportunity to read the letter of complaint and, therefore, believes that the information should not be classified as sensitive. Moreover, she claims that the letter was the only document containing the allegations of the complainant and constituted the sole piece of evidence against her and the other three respondents. With respect to the portions of the investigation report at issue, the appellant also states that it is her "... right to have the results from [her] investigation", thereby inferentially raising the application of section 21(2)(d) of the Act (fair determination of her rights).

The complainant has explained the circumstances under which she wrote the letter at issue. The complainant indicated that during the investigation into her allegations of harassment she was not permitted to meet with the appellant and the other three respondents. Instead, she wrote each of the individuals a letter outlining what she "... wanted to say" to them. The complainant understood that the letters would be read to each of the four individuals separately by the officer investigating the allegations. The complainant indicates that she was assured by the Superintendent of the institution, the Senior Manager and the investigating officer that copies of the letter would not be given to anyone. The complainant also submits that disclosure of the letter might place her in a situation of being subject to further harassment.

The complainant now submits that the relevant portions of the investigation report should not be disclosed.

As I understand these submissions, the complainant is raising the application of the considerations in sections 21(2)(e), described above, and 21(2)(h) (the personal information has been supplied by the individual to whom it relates in confidence). These are factors which, if applicable, weigh in favour of privacy protection.

I would also note that the complainant's original written complaint was in the form of an eight-page letter dated January 20, 1994 to the Superintendent of the detention centre at which the complainant and the respondents were employed. This letter contained the complaints against all four individuals. Those portions of this document related to the complaint against the appellant have been previously disclosed to her in response to her request under the Act.

The Ministry subsequently advised the complainant to separate the eight-page letter into four separate complaints. This resulted in the creation of the letter at issue in this appeal.

Having reviewed the representations of the appellant and the complainant, I have made the following findings:

A) The Complaint Letter

- (1) As the Ministry has provided no submissions in this matter and the complainant does not make any reference to the fact that the information contained in her letter is "sensitive", I find that section 21(2)(f) is not a relevant factor in this appeal with respect to the personal information contained in the complaint letter.
- (2) Section 21(2)(e) is not a relevant consideration as the complainant has provided no evidence to substantiate her claims that disclosure of the letter "... might place [her] in a position of being vulnerable to future harassment". In this regard, I note that the complainant has long since left the employ of the Ministry.
- (3) Many past orders of the Commissioner's office have considered the application of section 21(2)(h) (supplied in confidence) in the context of personal information generated as a result of workplace and/or sexual harassment investigations (Orders P-656 and P-738). In many of these orders, section 21(2)(h) was found not to be determinative of whether information which directly addresses the substance of the complaints should be protected, and such information was ordered disclosed. The general principle underlying the approach taken in past orders ensures that when the respondent in a harassment complaint seeks information, he/she is advised of the substance of the accusations and the identity of the complainant. In order to achieve this result, the respondent needs access to, among other things, the information provided by the complainant.

In this case, the Ministry appears to have appropriately applied this principle in disclosing portions of the January 20, 1994 eight-page complaint to the appellant.

Having considered this general principle of disclosure, and the circumstances under which the complaint letter at issue was created and read to the appellant, I find that those portions of this letter which directly address the substance of the complaint made against the appellant should be released to her.

- (4) Although the complaint letter was read to the appellant, I find that this did not constitute "disclosure" for the purposes of the Act. I adopt the approach of those past orders of the Commissioner's office which have found that there must be some evidence that the institution treated the matter as coming under the provisions of the Act at the time the record was shown to the appellant (Orders M-180 and P-274).
- (5) There are no considerations favouring disclosure of the personal information contained in the letter which is not directly related to the substance of the complaints made against the appellant.

B) Portions of the Investigation Report

- (1) Section 21(2)(d) is not a factor weighing in favour of disclosure of portions of this document as the appellant has not claimed that the "right" in question is a legal right drawn from the concepts of common law or statute law. This is one of the four criteria which the appellant must establish in order for section 21(2)(d) to be regarded as a relevant consideration (Order P-312).
- (2) The information at issue in this record is not directly related to the substance of the complaints made against the appellant.
- (3) There are no factors favouring disclosure of those parts of the investigation report which have not been released to the appellant.

To summarize, I find that disclosure of those portions of the complaint letter which do not directly address the substance of the complaint would, pursuant to section 49(b) of the Act, constitute an unjustified invasion of the personal privacy of individuals other than the appellant. Applying the same reasoning, I find that the severances made to page 2 of the investigation report were appropriate.

ORDER:

1. I uphold the Ministry's decision to deny access to those portions of the investigation report which were not disclosed to the appellant.
2. I order the Ministry to disclose those portions of the complaint letter which are **not** highlighted on the copy of this record which is being sent to the Freedom of Information and Privacy Co-ordinator of the Ministry with a copy of this order.

3. I order the Ministry to disclose those portions of the complaint letter described in Provision 2 to the appellant within thirty-five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
4. In order to verify compliance with the provisions of this order, I reserve the right to require that the Ministry provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ June 6, 1995