



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

ORDER P-972

Appeal P-9400747

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

In this appeal, the requester wished to review the parole report of a named individual (the parolee), including any recommendations made by the individual's parole officer. The requester believed that he, personally, had been referred to in the report.

The requester directed his access request to the Ministry of the Solicitor General and Correctional Services (the Ministry) which held the record in question. The requester also provided the Ministry with a letter signed by the parolee where the individual consented to have his personal information released to the requester.

The Ministry identified a Post Suspension Report dated June 17, 1994 as the record that was responsive to the request. This document was authored by a Probation and Parole Officer who worked for the Ontario Board of Parole. The Ministry disclosed certain parts of this report to the requester but withheld the remaining portions based on the following exemptions contained in the Freedom of Information and Protection of Privacy Act (the Act):

- correctional records - section 14(2)(d)
- invasion of privacy - section 21(1)

The requester appealed this decision to the Commissioner's office.

A Notice of Inquiry was provided to the requester (now the appellant), the Ministry and five individuals who were mentioned in the report (the affected parties).

In her submissions, counsel for the appellant argued that the report contained the personal information of her client. As a result, the parties were subsequently asked to make submissions on the application of section 49(b) of the Act (invasion of privacy). Representations were received from the Ministry, the appellant and two of the affected parties. One of these individuals indicated that he would not be making formal submissions while the second did not object to the disclosure of the record. In this order, any further reference to the term "affected party" will not include the parolee.

In her submissions, counsel for the appellant also indicated that her client was not interested in obtaining information about the living arrangements of the parolee. I have highlighted these passages of the record in yellow for the benefit of the Ministry. This information falls outside the ambit of the appeal and must not be disclosed to the appellant.

In its representations, the Ministry indicated that it would no longer be relying on the correctional records exemption. Consequently, I will not make further reference to section 14(2)(d) in my order.

DISCUSSION:

RECORDS OUTSIDE THE SCOPE OF THE ORIGINAL REQUEST:

In her letter of appeal, counsel for the appellant asked why the Ministry had not provided her client with a copy of the final parole report, including attachments, as well as any transcripts or audiotapes of the relevant parole hearing. During the processing of the file, the Appeals Officer advised counsel that the appellant had not originally sought access to these records and, thus, that they fell outside the scope of the appeal. With a view towards resolving this issue, however, the Appeals Officer asked the Ministry about the whereabouts of these documents.

The Ministry subsequently advised the Commissioner's office that a final parole report is only issued where an individual has successfully completed his or her period of parole. Since at the point in time that the appeal was filed, the individual was still on parole, a final report had not been prepared. The Appeals Officer informed counsel of this fact in writing and confirmed that the only record at issue in this appeal was the Post Suspension Report. No response to this communication was received. In her representations, however, counsel has again indicated that she wishes to obtain access to these additional records.

Previous orders have held that the Commissioner's office has the power to control the manner in which the appeals process is undertaken. As part of this general authority, this tribunal's policy is that a requester cannot expand the nature of his or her request during the appeal process. In addition, once an appellant has narrowed the ambit of an appeal, he or she cannot reintroduce the excluded information at a later date.

This approach has been adopted for a number of reasons. First, absent such a policy, there would be no certainty as to the scope of an appeal. Second, unless the exact nature of the records at issue is known at an early stage in the proceedings, it will not be possible to successfully mediate the appeal under section 51 of the Act. Finally, the issue identification and notification functions performed by the Commissioner's office could not be conducted effectively unless the records in question are accurately identified.

While I appreciate the appellant's reasons for wanting to address all access related issues in the context of the present appeal, I believe that it would be unfair to expand the scope of these proceedings at this late stage in the process. In making this determination, I am also mindful of the fact that counsel for the appellant would be entitled to make a further access request to the Ministry for any other information about her client which she believes should exist.

For the reasons outlined, I will not consider whether there are any further records that are responsive to the request in the context of the present appeal.

PERSONAL INFORMATION AND THE INVASION OF PRIVACY

I will now determine whether the Ministry must release the Post Suspension Report to the appellant. To do so, I must first consider whether the report contains personal information and, if so, to whom this personal information relates.

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. In addition, where individual (X) expresses a view or opinion about

individual (Y), section 2(1)(g) of the Act prescribes that this is the personal information of individual (Y) and not that of individual (X).

The Commissioner's office has also issued many orders which indicate that information provided by an individual in his/her professional or employment capacity does not constitute personal information for the purposes of the Act.

With these principles in mind, I have carefully reviewed the contents of the Post Suspension Report. I find that all three pages of this document contain the personal information of the parolee. As I have previously indicated, the parolee has consented to release this information to the appellant.

One passage on page two of the report contains certain views and opinions expressed by two of the affected parties about the appellant. Based on the application of section 2(1)(g) of the Act, I find that these comments constitute the appellant's personal information and not that of the affected parties.

In all other respects, I find that the references to, and comments made by, affected parties elsewhere in the report relate to these individuals in their employment or professional capacities and, hence, do not constitute personal information.

Based on this analysis, the information in the report pertaining to these affected parties does not constitute their personal information for the purposes of the Act. As a result, the disclosure of such information could not, by definition, result in an unjustified invasion of their personal privacy under section 49(b) or section 21(1) of the Act. Since the Ministry has not claimed that any other exemptions apply to this information, I order that it be disclosed to the appellant.

In deference to the representations provided by the parties, I would add the following comments. Even if I had found that the passage on page 2 contained the personal information of the two affected parties, I would have concluded that there was insufficient evidence before me to establish that any of the privacy protection factors outlined in section 21(2) of the Act applied to this information. Based on the application of section 49(b) of the Act, there would not have existed an unjustified invasion of the personal privacy of the affected parties.

ORDER:

1. I order the Ministry to disclose the Post Suspension Report to the appellant with the exception of the portions of the record which I have highlighted in yellow within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order. I have provided a copy of the highlighted record to the Ministry's Freedom of Information and Privacy Co-ordinator.
2. In order to verify compliance with 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 under Provision 1.

Original signed by: _____
Glasberg
Assistant Commissioner

_____ August 3, 1995 _____ Irwin