



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

ORDER P-1042

Appeal P-9500318

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request from a former inmate at the Toronto Jail for access to his entire jail file, including any medical records. The Ministry located 33 pages of records responsive to the request and granted access to all of them, in whole or in part. The Ministry denied access to portions of nine pages of records, claiming the application of the following exemptions contained in the Act:

- invasion of privacy - section 49(b)
- confidential correction record - section 49(e)

In addition, the Ministry submitted that the information which it did not disclose on Page 7 of the records is not responsive to the request. The requester appealed the denial of access to the records. A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties. During the inquiry stage of the appeal, the Ministry disclosed to the appellant the severed information to which it had previously denied access found on Pages 10, 11 and 15.

The records which remain at issue are portions of Pages 1, 14, 22, 26, 26A and 27. I have reviewed the undisclosed portion of Page 7 and agree that it contains information which does not relate either to the appellant or his request. I will not, accordingly, discuss it further in this order.

DISCUSSION:

CONFIDENTIAL CORRECTION RECORD

The Ministry claims the application of section 49(e) to the undisclosed portions of Pages 1 and 14. This section provides:

A head may refuse to disclose to the individual to whom the information relates personal information,

that is a correctional record where the disclosure could reasonably be expected to reveal information supplied in confidence;

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 or where the disclosure of the name would reveal other personal information about the individual.

Pages 22, 26 and 26A are extracts from occurrence reports prepared by Toronto Jail staff. Page 27 is a misconduct report. The undisclosed information consists of the names and/or identification numbers of other jail inmates.

I have reviewed each of the records to determine whether they contain personal information and, if so, to whom the personal information relates. I find that each of the records contains the personal information of

the appellant. In addition, I find that Pages 22, 26, 26A and 27 contain the personal information of other individuals.

Section 47(1) of the Act gives individuals a general right of access to their own personal information in the custody or under the control of a government body. Section 49 provides a number of exceptions to this general right of access. Under section 49(e), where a record is a 'correctional record' and the Ministry determines that its disclosure could reasonably be expected to reveal information supplied in confidence, the Ministry has the discretion to refuse to grant the requester access to the record.

Having reviewed the information contained in the undisclosed portions of pages 1 and 14 and the representations of the Ministry, I find that these pages are correctional records within the meaning of section 49(e) and that the information which has been withheld was supplied in confidence to the Ministry by individuals other than the appellant. Accordingly, I find that the disclosure of this information could reasonably be expected to reveal information contained in a correctional record which was supplied in confidence. The undisclosed information contained in these pages is, therefore, properly exempt under section 49(e).

INVASION OF PRIVACY

The Ministry claims that the undisclosed information contained in Pages 22, 26, 26A and 27 is exempt from disclosure under section 49(b) of the Act.

Again, section 47(1) of the Act gives individuals a general right of access to their own personal information in the custody or under the control of a government body. Another exception to this general right of access is contained in section 49(b).

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 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 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 Ministry must consider the application of the factors listed in section 21(2) together with all other considerations that are relevant in the circumstances of the case.

The Ministry submits simply that the disclosure of the information contained in these records would result in an unjustified invasion of the personal privacy of the individuals named therein. No reference is made in the Ministry's representations to the possible application of any of the presumptions listed in section 21(3) and I find that none apply. Neither the appellant or the Ministry address the factors set forth in section 21(2).

Following my independent review of the records and all of the circumstances of the appeal, I find that the undisclosed information contained in Pages 22, 26, 26A and 27 may be characterized as 'highly sensitive' under section 21(2)(f) as it relates to individuals who have been incarcerated. This is a consideration which weighs in favour of privacy protection.

I find that none of the considerations listed in section 21(2) which favour the disclosure of personal information are relevant in the circumstances of this appeal. In addition, I have not identified any unlisted factors favouring disclosure which may be applicable. The appellant has not argued that sections 21(4) or 23 of the Act have any application in this case.

Having considered all of the circumstances of this appeal, including the representations of the Ministry on its exercise of discretion under section 49(b), I find that the disclosure of the information which has been severed from Pages 22, 26, 26A and 27 would result in an unjustified invasion of the personal privacy of individuals other than the appellant. Accordingly, the exemption in section 49(b) applies to this information.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____ November 7, 1995

Donald Hale
Inquiry Officer