



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

ORDER P-1080

Appeal P-9500509

Archives of Ontario



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NATURE OF THE APPEAL:

The Archives of Ontario (the Archives) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to the Earls court Children's Home. Specifically, the requester sought access to records relating to its licensing, funding, the results of audits, inspections, investigations and interviews as well as any allegations or complaints of physical or sexual abuse made against the Earls court Children's Home or its employees. The request covered records created between 1960 and 1972. The Archives granted partial access to the contents of nine files identified as responsive to the request and denied access to the remainder based on the following exemption contained in the Act:

- invasion of privacy - section 21(1)

The requester (now the appellant) appealed the decision to deny access and, in his appeal letter, narrowed the scope of the request. During the mediation of the appeal, the scope of the request was further narrowed. The records remaining at issue consist of one paragraph in File 3, the name and title of an individual in File 7 and a number of severances in File 8. A Notice of Inquiry was provided to the appellant and the Archives. Representations were received from both parties. In its representations, the Archives withdraws its claim that a page in File 8 entitled "Long Range Plan" is exempt from disclosure. This page should, accordingly, be disclosed to the appellant.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual and includes the views or opinions of another individual about the individual. Previous orders have held that information about an employee does not constitute that individual's personal information where the information relates to the individual's employment responsibilities or position. Where, however, the information involves an evaluation of the employee's performance or an investigation into his or her conduct, these references are considered to be the individual's personal information.

I have reviewed the information remaining at issue in the records and find that it qualifies as the personal information of several former staff members of the Earls court Children's Home. The information relates to evaluations and opinions about the professional competence of these individuals. The personal information does not relate to the appellant's client.

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 constitute 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 where the personal information falls under section 21(4) or where

a finding is made that the public interest override provision in section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the Archives 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 Archives submits that the presumptions in sections 21(3)(d) (employment or educational history), 21(3)(f) (an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness) and 21(3)(g) (personal recommendations or evaluations, character references or personnel evaluations) apply to the information which remains at issue. The Archives further states that there are two factors under section 21(2) favouring the non-disclosure of the information in the records which are relevant in the circumstances: sections 21(2)(f) (the information is highly sensitive) and 21(2)(i) (disclosure of the information may unfairly damage the reputation of persons referred to in the records).

The appellant states that to the extent that the records relate to his client or to individuals named in civil proceedings involving his client, the information at issue is relevant to the proceedings and does not fall under the section 21 exemption. He submits in the alternative, that if section 21 were to apply, disclosure would be justified in that, "...there is a compelling public interest in the disclosure of the records, as they may provide evidence in respect of allegations or complaints of sexual abuse against the Earls Court Children's Home or its employees". Although he does not specify a particular section of the Act, the appellant's arguments raise the possible application of sections 21(2)(d) and 23 of the Act.

Having reviewed the records and the representations of the parties, I make the following findings:

1. The undisclosed portions of Files 3, 7 and 8 include comments as to the professional competence of several individuals. I find that the disclosure of these portions of the records would reveal personal information about these individuals which is highly sensitive in nature, within the meaning of section 21(2)(f) of the Act. This is a factor weighing in favour of privacy protection.
2. Although not raised by the Archives as a relevant consideration, I find that some of the personal information contained in File 8 was explicitly supplied in confidence by the individual to whom it relates, as described in section 21(2)(h) of the Act. This part of the records is the covering letter to, and the undisclosed portions of, a report stamped "Confidential", which was prepared by an individual who is providing background information as to the reasons for his resignation. This factor also weighs in favour of the non-disclosure of the personal information.
3. The appellant's representations did not provide any details about the proceedings in which his client is involved nor did it contain an explanation as to how the disclosure of the information contained in the records would be relevant to those proceedings. I find that I have not been presented with sufficient evidence to establish the application of section 21(2)(d) when balancing the privacy interests of individuals against the appellant's right to disclosure.

4. I find that portions of the remaining information in File 8 also contain personal recommendations and evaluations as envisioned by section 21(3)(g) of the Act. These recommendations and evaluations of members of Earls court Children's Home Board of Directors, management and staff are found throughout the undisclosed portions of File 8.
5. I am not persuaded that there exists a compelling public interest in the disclosure of the personal information contained in the records which clearly outweighs the purpose of the section 21 exemption. I have not been provided with sufficient evidence which would establish a **public**, as opposed to a private interest, in the disclosure of the information. Accordingly, section 23 of the Act does not apply in the circumstances of this appeal. I would also note that the information remaining at issue does not refer to allegations or complaints of sexual abuse against the Earls court Children's Home or its employees, which was a consideration raised by the appellant in the context of section 23.
6. The appellant has not provided representations on the application of section 21(4) of the Act, and after an independent review of the records, I find that section 21(4) has no application in the circumstances of this appeal.

I find that the disclosure of the personal information in the records would constitute an unjustified invasion of the personal privacy of the individuals referred to in it and that the records are, accordingly, properly exempt from disclosure under section 21 of the Act.

ORDER:

1. I order the Archives to disclose to the appellant within twenty-one (21) days of the date of this order the page included in File 8 entitled "Long Range Plan".
2. I uphold the decision of the Archives to deny access to the remaining information contained in Files 3, 7 and 8.
3. In order to verify compliance with this order, I reserve the right to require the Archives to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale

December 13, 1995

Inquiry Officer