



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1129

Appeal P-9500652

Ministry of Community and Social Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records describing the action taken by the Ministry to discipline a named employee (the affected person). The requester was one of a number of other employees who asked the Ministry to investigate the actions of the affected person. The Ministry located one record which contained the information sought by the requester and denied access to it, in its entirety, pursuant to the following exemptions contained in the (Act):

- invasion of privacy - sections 21(1) and 49(b)

The requester appealed the Ministry's decision to deny access to the record, a two-page letter from the Ministry to the affected person.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

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 information relating to that individual.

I have reviewed the record at issue and find that it contains the personal information of the appellant, the affected person and a number of other individuals.

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.

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 appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information would not constitute an unjustified invasion of personal privacy of another individual.

Since the appellant has a right of access to his/her own personal information, the only situation under section 49(b) in which he/she can be denied access to the information is if it can be demonstrated that the disclosure of the information would constitute an unjustified invasion of another individual's privacy.

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) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Ministry submits that the information contained in the record constitutes the employment history of the affected person and, as such, it falls within the application of the presumption under section 21(3)(d). In addition, the Ministry argues that section 21(2)(f) (highly sensitive information) is a relevant consideration favouring privacy protection when balancing the appellant's right to access against the affected person's right to privacy.

The appellant submits that, as one of the complainants in the matter which resulted in the affected person's discipline, she is entitled to know what steps were taken by the Ministry to address her allegations, particularly as they were substantiated by the investigation.

I have reviewed the representations of the parties and the responsive record and have made the following findings:

1. With the exception of a portion of paragraph four on page two, the record does not contain information which would qualify as the "employment history" of the affected person. Accordingly, I find that the disclosure of the remaining portions of the record would not constitute a presumed unjustified invasion of the personal privacy of the affected person under section 21(3)(d) of the Act.
2. I find that the remaining information contained in the record may properly be characterized as "highly sensitive" within the meaning of section 21(2)(f). This factor weighs in favour of the protection of the affected person's privacy.
3. I find that the appellant, through her continued employment with the Ministry and the disclosure of other records to her through previous requests under the Act, has been made aware of the important components of the Ministry's reaction to the allegations made against the affected person who was the subject of the complaints. The appellant is aware of the fact that the allegations against the affected person were substantiated by the Ministry investigator and that the individual was disciplined.
4. I find that none of the circumstances listed in section 21(4) are present in this appeal and the appellant has not raised the possible application of section 23 of the Act.
5. I have carefully balanced the competing privacy and access considerations present in this appeal and find that the disclosure of the requested record would result in an unjustified invasion of the personal privacy of the affected person. Accordingly, the record is properly exempt under section 49(b) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ February 15, 1996

POSTSCRIPT:

As one of the complainants in the investigation, the appellant is entitled and was granted access to information about the manner in which the investigation was undertaken and its findings. In my view, the disciplinary action taken by the Ministry is, however, personal to the affected person and represents the implementation of those findings to fit the particular circumstances of the complaints made against her.