



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1113

Appeal P-9500440

Ministry of the Attorney General



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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 Attorney General (the Ministry) received a request for access to correspondence between a named individual (the reporter) and the Ministry's Office of the Public Trustee, in relation to the estate of a deceased individual. The Ministry identified five letters, totalling ten pages, as being responsive to the request and denied access to them based on the following exemptions in the Act:

- law enforcement - section 14(1)(a)
- invasion of privacy - section 21(1)

The requester appealed the decision to deny access. The records at issue in this appeal consist of correspondence between the Public Trustee and the reporter, and the reporter and the Ministry in which he raises issues pertaining to the estate of a deceased individual. The reporter has covered the matter extensively in the press.

A Notice of Inquiry was provided to the appellant, the Ministry and the reporter. Representations were received from the appellant and the reporter. During the inquiry stage of this appeal, the Ministry indicated that it was withdrawing its objection to the release of the records. Accordingly, the discretionary exemption in section 14(1)(a) of the Act is no longer at issue in this appeal.

Therefore, the only issue before me is the application of the mandatory exemption in section 21(1) of the Act to the correspondence.

DISCUSSION:

PERSONAL INFORMATION

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 and 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. The definition in section 2(1) also includes correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence.

Previous orders of this agency have determined that where the information relates to individuals in their professional capacity or in the execution of their employment responsibilities, it does not qualify as "personal information" for the purposes of the Act (Orders P-369, P-624 and P-676).

The reporter submits that, as a business writer, his interests would be adversely affected by the disclosure of the record at issue. The appellant submits that the reporter corresponded with the Ministry in his professional capacity as a journalist and, therefore, the record at issue does not contain the personal information of the reporter.

The representations of the reporter indicate his concerns as a business writer and have expressed no "personal concerns". In addition, there is no evidence before me to show that the correspondence to the Public Trustee and the Ministry and the replies thereto were "implicitly or explicitly of a private or confidential nature".

In my view, based on my review of the record and the submissions of the parties, the reporter corresponded with the Ministry in his professional, rather than his personal, capacity. I find, therefore, that the correspondence does not constitute the personal information of the reporter. Parts of the record also contain discussions of a generic nature and I find that this information does not relate to any identifiable individual.

There is, however, information contained in the record that refers to the estate of the deceased individual and the management of that estate. I find that this information satisfies the definition of "personal information" in section 2(1) of the Act and relates to the deceased individual. In addition, I find that there is information on pages 6, 8, 9 and 10 of the record that refers to other named or identifiable individuals that would constitute the personal information of these other individuals.

INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits disclosure of this information except in certain circumstances. The appellant has indicated that the circumstances in sections 21(1)(e) and (f) may be applicable. These sections read:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

In my view, the personal information in the record which relates to the deceased individual concerns issues about the management of the deceased individual's estate. These issues have received wide media attention. I find that because of the public nature of the events which have transpired concerning this matter, disclosure of this information would not constitute an unjustified invasion of personal privacy and section 21(1) does not apply to this part of the record.

I will now consider the application of sections 21(1)(e) and (f) to the remaining personal information on pages 6, 8, 9 and 10 of the record.

The appellant submits that she is currently writing a book and requires the information at issue for research purposes. She states that she is prepared to "discuss reasonable conditions on issues of confidentiality [with the Ministry]" and therefore, the exception in section 21(1)(e) of the Act applies to the personal information in the record.

Section 21(1)(e) is the only provision of the Act where the granting of conditional access is explicitly contemplated. Even if it could be said that the disclosure is for a research purpose, the appellant has provided me with no evidence that the conditions in sections 21(1)(e)(i), (ii) and (iii) have been satisfied at this time. Therefore, the exception in section 21(1)(e) of the Act does not apply.

Section 21(1)(f) of the Act describes another exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that the section 21(1)(f) exception applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of the personal privacy of the individuals to whom this information relates.

The personal information that remains at issue is contained in pages 6, 8, 9 and 10. These pages form part of the letters from the reporter to the Ministry and/or the Public Trustee and contain the personal information of the individuals identified therein.

I am aware that certain information surrounding the management of the estate has been well documented in the press. However, there is no evidence before me which identifies the source of the remaining personal information in the record and whether in fact, the personal information has been disseminated in whole or in part. I am also cognizant that I am required to make a determination on the application of a mandatory section of the Act and that disclosure under the Act is necessarily disclosure to the world.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in 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 if 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 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 circumstances that are relevant in the circumstances of the case.

I have carefully reviewed the representations of the parties and the record at issue and I make the following findings:

- (1) In my view, disclosure of **part** of the remaining personal information on pages 6, 8, 9 and 10 of the record would constitute a presumed unjustified invasion of personal privacy as this information relates to the employment history (section 21(3)(d)) and describes the financial information (section 21(3)(f)) of identifiable individuals. None of the personal information contained in the record falls under section 21(4) and the appellant has not raised the possible application of section 23 of the Act. Accordingly, I find that disclosure of the personal information would constitute a presumed unjustified invasion of personal privacy and that this information is exempt from disclosure under section 21(1) of the Act.
- (2) In my view, the remaining personal information on pages 6, 8, 9 and 10 of the record is also "highly sensitive". Accordingly, I find that section 21(2)(f) is applicable in the circumstances of this appeal, weighing against disclosure of the information in the record. I have considered the factors listed in section 21(2) together with all circumstances relevant to the case and I find no factors which weigh in favour of disclosure. Therefore, I find that disclosure of the personal information on pages 6, 8, 9 and 10 of the record would constitute an unjustified invasion of personal privacy and this information is exempt from disclosure under section 21(1).

I have highlighted the portions of the record which I have found to be exempt under section 21(1) of the Act.

ORDER:

1. I order the Ministry to withhold access to the highlighted portions of pages 6, 8, 9 and 10 as shown on the copy of the records sent to the Freedom of Information and Privacy Co_ordinator for the Ministry with a copy of this order.
2. I order the Ministry to disclose pages 1-5 and 7 in their entirety together with the remaining (non-highlighted) portions of pages 6, 8, 9 and 10 of the record to the appellant by sending copies of the record to the appellant by **March 6, 1996** but not earlier than **March 1, 1996**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ January 31, 1996