



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

ORDER P-1157

Appeal P-9500710

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The appellant and her husband are the parents of a severely disabled son, who died in June 1995. For part of his life, the appellant's son was involved in the Homeshare program of the Child and Parent Resource Institute, operated by the Ministry of Community and Social Services (the Ministry). One aspect of his involvement in Homeshare was a residential placement with a Homeshare family.

After her son's death, the appellant submitted a request to the Ministry under the Freedom of Information and Protection of Privacy Act (the Act). She requested the entire file relating to her son, as well as "letters, discussions, or any addendum files that may be related to this case" and "files containing information about his parents [i.e. the appellant and her husband] ...".

The Ministry granted substantial access to the requested information, but denied access to parts of some records on the basis of the following exemptions in the Act:

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

The Ministry's response also noted that one page of one of the records could not be located.

Subsequent to its initial decision letter, in response to a request from the appellant, the Ministry reconsidered its decision and granted access to additional information in one of the records.

The appellant then filed an appeal of the Ministry's decision to deny access to the undisclosed information in the responsive records.

This office sent a Notice of Inquiry to the appellant and the Ministry. The Notice was also sent to seventeen individuals mentioned in the records (the affected persons). The appellant, the Ministry and three of the affected persons submitted representations.

The appellant's husband and another individual have consented to disclosure of their personal information to the appellant.

The issues in this appeal are:

- (1) whether section 66(a) or (c) of the Act applies (these sections permit individuals to exercise the rights of others under the Act in certain situations);
- (2) whether the parts of the records to which access was denied are exempt under section 21(1) or 49(b); and
- (3) whether the Ministry conducted a reasonable search for the missing page referred to above.

The records at issue consist of treatment plans, progress records, summary reports, summaries of contacts, current issues sheets, handwritten notes, memoranda and correspondence. They are more particularly described in Appendix "A", which also assigns record numbers and provides a cross-reference to the Ministry's page numbers.

PRELIMINARY ISSUE:

Sections 66(a) and (c) of the Act

These sections state:

Any right or power conferred on an individual by this Act may be exercised,

- (a) where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;
- (c) where the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

In this appeal, if the appellant established the application of one of these sections, she would be able to request her son's personal information as if it were her own. Because Part III of the Act gives individuals greater access rights to their own personal information than the right of access to general records provided in Part II of the Act, this could enhance the appellant's ability to obtain access to her son's information.

These provisions were raised in the Notice of Inquiry since it appeared that they might be relevant. However, neither the request letter, the letter of appeal, nor the appellant's representations make any reference to either of these sections, nor to any factual basis for applying them (except for the fact that the appellant's son was clearly under the age of sixteen, which, in itself, does not satisfy the criteria in section 66(c)).

I find that the application of these sections is not established.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. Sections (b), (e) and (g) of this definition indicate that the following categories of information qualify as personal information:

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (g) the views or opinions of another individual about the individual.

I have reviewed the records to determine whether they contain personal information, and if so, to whom the personal information relates. I will now summarize my findings in this regard.

I find that the severed portions of the records contain the following personal information:

- Record 1 - personal information of the appellant's son's part-time Homeshare mother
- Record 2 - personal information about a family which sometimes looked after the appellant's son on weekends, when he was in the Homeshare program
- Records 3, 8, 14, 15 and 16 - the names of other Homeshare clients, which are the personal information of those individuals
- Record 4 - personal information of a physician who was involved in the care of the appellant's son
- Record 5 - personal information pertaining to the appellant and her husband, and a caseworker
- Record 6 - personal information of the appellant and her husband, and a parent of another Homeshare client
- Record 7 - personal information of the appellant's son and his Homeshare parents, as well as the appellant and her husband
- Records 9 and 10 - personal information of the appellant's son and a physician
- Record 11 - personal information of the appellant, her husband, her son and a physician
- Record 12 - the names of individuals comprising another Homeshare family, which are their personal information
- Record 13 - personal information of the appellant, her son, the appellant's son's Homeshare parents, a Homeshare caseworker and a Children's Aid Society Social Worker
- Records 17 and 19 - personal information of the appellant's son, his Homeshare parents and another Homeshare client
- Record 18 - personal information of the appellant's son and his Homeshare parents.

The Ministry has claimed the exemptions in sections 21 and 49(b) on the basis that disclosure of the withheld information would constitute an unjustified invasion of personal privacy.

Some of the undisclosed information in the records consists of personal information pertaining exclusively to the appellant and her husband, in combination with some basic information about the appellant's son which is clearly known to her already. These passages are found in Records 5, 6 and 13.

These same passages also contain references to several other individuals. However, I find that these references do not constitute the personal information of these other individuals. This finding is based on sections (e) and (g) of the definition of personal information (quoted above), **and** on the view expressed in many previous orders (see Orders P-270 and P-721), that information about an individual in an ordinary professional or employment context is not that individual's personal information.

Because the only personal information in the above-mentioned passages from Records 5, 6 and 13 is personal information of the appellant and her husband (who has consented to disclosure) and basic information about the appellant's son which is clearly well known to the appellant, I find that disclosure of this information could not be an unjustified invasion of anyone's personal privacy, and I will order it disclosed. This information is highlighted in blue on the copies of these three records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.

INVASION OF PRIVACY

I must now decide whether the remaining personal information is exempt under section 21 or 49(b) of the Act.

Under section 49(b), 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.

In addition, where a record does not contain the appellant's personal information but does contain personal information of another individual or individuals, section 21(1) of the Act prohibits disclosure of this information unless one of the exceptions listed in that section is applicable. Section 21(1)(f) provides an exception which applies to permit disclosure where it would not constitute an unjustified invasion of personal privacy.

In this appeal, the appellant's husband and another individual mentioned in the records have both consented to disclosure of their personal information, raising the possible application of the exception to the section 21 exemption in section 21(1)(a) of the Act. In my view, the passages which remain at issue do not contain any information which pertains exclusively to the appellant's husband and his consent is therefore not relevant to the issues I must decide. Some information pertaining to the other consenting individual is included in the part of Record 5 which I have indicated, above, will be ordered disclosed. Other references to this individual are intertwined with personal information of others who did not consent to disclosure and I will consider, below, whether those passages are exempt.

I have found, above, that the severed portions of Records 5, 6, 7, 11 and 13 contain the personal information of the appellant. The disclosed part of Record 4 also contains the appellant's

personal information. Therefore, I will consider whether section 49(b) applies to the remaining undisclosed portions of Records 4, 5, 6, 7, 11 and 13, and whether section 21 applies to the undisclosed portions of the other records.

Under both sections 21 and 49(b), 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 appellant submits, regarding the undisclosed information in Record 13, that she should have access because this record (a letter) was copied to her son's Homeshare parents. In my view, this is not a reason for me to order disclosure under the Act. Regarding part of Record 6, the appellant submits that this could be disclosed because the individual referred to is not named. I am puzzled as to the appellant's awareness of this fact, since it would be difficult to ascertain this without a copy of this passage. However, in my view, there is other identifying information in this passage and I do not accept this submission.

The appellant also submits that the undisclosed information in the records should be disclosed because of an agreement between herself, her husband and the Ministry in which the Ministry agreed to provide "regular information sharing about [the appellant's son's] status by phone or home visit". As noted above, however, much of the undisclosed information is personal information pertaining to individuals other than the appellant's son. Moreover, despite signing this agreement, the Ministry could not waive the appellant's son's privacy rights under the Act (or those of any other individual), and those rights survived the signing of the agreement. In my view, in the circumstances of this case, this term of the agreement is not a relevant factor to consider in deciding whether additional disclosure would be an unjustified invasion of personal privacy.

In a related argument, the appellant mentions the Homeshare parents' agreement with the Child and Parent Resource Institute, which provides that they would not disclose information about the Homeshare arrangements to anyone, except as requested by (among others) "the child's legal guardian." The appellant appears to suggest that, on this basis, she should receive access to all undisclosed information about the Homeshare parents. However, even if I were satisfied that the Homeshare parents signed such an agreement, I would not view this exception to a confidentiality provision as a consent to disclosure under the Act. I find that this provision is not a relevant circumstance favouring disclosure.

The appellant also submits that sections 21(2)(a) (disclosure is desirable for the purpose of subjecting the activities of a government agency to public scrutiny) and 21(2)(c) (access to the information will promote informed choice of goods and services) are relevant factors favouring

disclosure.

One affected person submits that the presumption in section 21(3)(a) (medical history) applies.

Two other affected persons submitted representations which do not cite any specific sections of the Act, nor do they include facts which suggest the application of any specific sections. However, these individuals are clearly opposed to disclosure of any additional information about themselves.

The Ministry argues that sections 21(2)(f) (highly sensitive information) and 21(2)(i) (unfair damage to reputation) are relevant factors favouring privacy protection.

I make the following additional findings on the submissions summarized in the preceding four paragraphs:

- (1) The application of the presumed unjustified invasion of privacy in section 21(3)(a) (medical history) has not been established with regard to the undisclosed information.
- (2) The factor favouring privacy protection in section 21(2)(f) (highly sensitive information) is a relevant consideration with respect to the undisclosed information in Records 3, 4, 7, 8, 9, 10, 11, 14, 15 and 16 and the information remaining at issue in Records 5, 6 and 13.
- (3) I have not been provided with sufficient information to conclude that disclosure of the withheld information would unfairly expose any individual to pecuniary or other harm, and I find that section 21(2)(i) is not relevant in the circumstances of this case. Even if I found that this factor were relevant, based on the evidence I would attach very little weight to it.
- (4) I have not been provided with sufficient information to justify a finding that the factor in section 21(2)(a) or (c) is relevant in the circumstances.

With respect to section 21(2)(a), disclosure must be desirable “for the purpose of subjecting the activities of the Government of Ontario or its agencies to public scrutiny”, and in this case, I am not satisfied that this is so. In my view, the appellant’s interest in this information is essentially a private one.

With respect to section 21(2)(c), I am not satisfied that disclosure of any of the withheld information would “promote informed choice in the purchase of goods and services” as the section requires.

- (5) Because no factors favouring disclosure have been established with respect to the information I am considering under section 21 (i.e. the undisclosed parts of Records 1, 2, 3, 8, 9, 10, 12, 14, 15, 16, 17, 18 and 19), I find that the appellant has not established the application of the exception in section 21(1)(f), and the withheld information in those records is exempt under section 21(1).
- (6) The only relevant factor with respect to the information I am considering under section

49(b) (i.e. the undisclosed parts of Records 4, 7 and 11 and the information remaining at issue in Records 5, 6 and 13) is a factor favouring privacy protection, and therefore I find that disclosure of this information would constitute an unjustified invasion of personal privacy. Therefore, this information is exempt under section 49(b).

In summary, with the exception of the information in Records 5, 6 and 13 which is highlighted in blue on the copies of these records being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order, all the withheld information is exempt under section 21(1) or 49(b).

REASONABLENESS OF SEARCH

This issue relates only to the missing page (part of Record 4).

The Ministry has provided an affidavit, executed by the manager of Clinical Information Systems of the Child and Parent Resource Institute, who explains that the missing page was likely shredded by mistake. I accept this explanation. In my view, the Ministry has made reasonable and appropriate efforts to locate the responsive records.

ORDER:

1. I find that the Ministry's efforts to locate responsive records were reasonable and this aspect of the appeal is dismissed.
2. I order the Ministry to disclose the parts of Records 5, 6 and 13 which are highlighted in blue on the copies of these records being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order by sending a copy to the appellant by **May 3, 1996** but not earlier than **April 29, 1996**.
3. I uphold the Ministry's decision to deny access to the remainder of the undisclosed information.
4. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant pursuant to Provision 2.
5. If the Ministry is unable to comply with Provision 2 of this order due to the current OPSEU strike, I order the Ministry to contact me through the Registrar of Appeals by **April 23, 1996** so that I may then consider any required adjustment to the compliance date(s) and respond accordingly with notice to all parties.

Original signed by: _____

John Higgins
Inquiry Officer

_____ March 29, 1996

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER	MINISTRY PAGE NUMBERS	DESCRIPTION
1	A-1	Treatment Plan
2	A-1 to A-4	Progress Record
3	A-5	Progress Record
4	A-6	Summary Report
5	A-7	Summary of Contacts
6	A-8 to A-9	Correspondence dated April 22, 1994
7	A-10	Summary Report
8	A-11	Memorandum dated June 19, 1991
9	A-12	Correspondence dated July 23, 1991
10	A-13	Interoffice memorandum dated December 7, 1993
11	A-14	Memorandum dated December 8, 1993
12	A-15 to A-16	Undated correspondence
13	A-17 to A-19 (also B-3 to B-6)	Correspondence dated May 26, 1994
14	A-20	Memorandum dated August 8, 1991
15	A-21 and A-23	Memorandum dated June 18, 1992
16	A-22	Memorandum dated June 23, 1992
17	A-24 to A-26	Correspondence dated August 28, 1992
18	A-27 to A-28	Correspondence dated September 3, 1992
19	A-29 to A-31	Correspondence dated September 10, 1992