



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1233

Appeal P-9600151

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 under the Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to the death of the requester's husband at a hospital. The Ministry located two records, the Coroner's Investigation Report and the Surgical Review Statement, as responsive to the request and granted access to them, in their entirety, with the exception of four lines from page two of the Coroner's Investigation Report. The Ministry claimed the application of the following exemptions contained in the Act to exempt this portion of the record:

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

The requester, now the appellant, appealed the Ministry's decision. A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from the Ministry only.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the Coroner's Investigation Report and find that it contains the personal information of the appellant, her deceased husband and another individual (the affected person). While reference is made to other individuals in this document, I find that these persons are described in their professional or employment capacities and that the information does not, accordingly, constitute their personal information.

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

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the 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 Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant to the appeal.

In its decision letter, the Ministry indicated that the information in the records is subject to the presumptions contained in sections 21(3)(a) (medical history) and (b) (identifiable as part of an investigation into a possible violation of law). In its representations, the Ministry states that it is no longer relying on the application of the section 21(3)(b) presumption to the records but that it wishes to add the section 21(3)(d) (employment history) presumption.

The Ministry also raises as an unlisted consideration favouring the privacy protection of the affected person the fact that the appellant has received substantial disclosure of the records relating to the circumstances surrounding her husband's death.

I have carefully reviewed the undisclosed portion of Page 2 of the Coroner's Investigation Report and make the following findings:

- (1) The information does not relate to the psychological history of the affected person for the purposes of the Act. Nor, in my view, does this information relate to this individual's employment history.
- (2) The information may properly be described as "highly sensitive" within the meaning of section 21(2)(f). This is a consideration weighing in favour of the protection of the privacy of the affected person.
- (3) The fact that the requester has received substantial disclosure of the records sought is also a factor weighing in favour of the non-disclosure of the remaining information, which relates only to the affected person.
- (4) Section 21(4) does not apply in the circumstances of this appeal and the appellant has not raised the possible application of section 23.
- (5) Balancing the appellant's right of access to the records against the privacy interests of the affected person, I find that the considerations favouring privacy protection outweigh those which favour disclosure. Accordingly, I find that the disclosure of the remaining information would constitute an unjustified invasion of the personal privacy of the affected person. The information is, therefore, exempt under section 49(b).

ORDER:

I uphold the Ministry's decision.

Original signed by: _____ July 22, 1996
Donald Hale

Inquiry Officer