



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

ORDER P-1261

Appeal P-9600279

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a letter sent to the Office of the Public Guardian and Trustee which related to the requester. The Ministry located the record and notified the individual who sent the letter (the affected person) under section 28 of the Act, seeking the views of the affected person on the disclosure of the record to the requester. The affected person asked that the Ministry not grant access to the record.

The Ministry then denied the requester access to the record, claiming the application of the following exemptions contained in the Act:

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

The requester, now the appellant, appealed the Ministry's decision. This office provided a Notice of Inquiry to the appellant, the Ministry and the affected person. Representations were received from all three parties.

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 record and the submissions of the parties and find that the record contains the personal information of the appellant and the affected person. I find that the record contains information which qualifies as the personal information of the affected person as it represents correspondence sent to the Ministry by the affected person that is implicitly of a private or confidential nature.

In addition, the views and opinions of the affected person about the appellant are also contained in the record. For this reason, the information also qualifies as the personal information of the appellant.

INVASION OF PRIVACY

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution and the appellant, therefore, has a general right to access to those records which contain his personal information.

Section 49 sets out exceptions to this right. Where a record contains the personal information of both the appellant and another individual, section 49(b) of the Act allows the Ministry to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **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 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.

The affected person submits that the presumptions contained in section 21(3)(a) and (b) apply to the personal information contained in the record. These provisions state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

I find that the record does not contain information which may properly be considered as relating to the medical condition of the appellant. The information describes the medical condition of the appellant as perceived by the affected person, who is not a medical professional. I find, therefore, that this information, which is contained in Page 1 of the record, does not fall within the presumption in section 21(3)(a).

The affected person further submits that the record was compiled as part of an investigation undertaken by the Public Guardian and Trustee pursuant to sections 27 and 62 of the Substitute Decisions Act (the SDA). I find that the record was compiled in the course of such an investigation but I cannot agree that the investigation examined a possible violation of law.

Under sections 27 and 62 of the SDA, the Office of the Public Guardian and Trustee's Guardian Investigations Unit may undertake an investigation into an individual's circumstances in order to determine whether the appointment of the Public Guardian and Trustee is necessary to preserve the individual's property or to ensure proper care for that person. Such an investigation cannot, however, lead to sanctions or penalties in a proceeding before a court or other tribunal against any persons. As such, I find that the record was not compiled as part of an investigation into a possible violation of law within the meaning of section 21(3)(b).

The appellant argues that he is entitled under section 47(1) of the Act to have access to all information about himself which is in the custody or control of an institution in Ontario.

The Ministry submits that the considerations listed in sections 21(2)(f) (the information is highly sensitive), (g) (the information is unlikely to be accurate or reliable) and (h) (the information was supplied in confidence) apply in the present situation and that these factors weigh in favour of the protection of the privacy of the affected person. In addition, the Ministry argues that an additional unlisted factor is also applicable in the unique circumstances of this appeal.

The affected person also argues that unlisted factors relating to the appellant's present circumstances weigh against the disclosure of the record.

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

1. The information contained in the record may properly be characterized as "highly sensitive" within the meaning of section 21(2)(f). I find that this is a significant consideration favouring the non-disclosure of the record to the appellant.
2. I do not have sufficient evidence before me to make a determination as to whether the information may or may not be accurate or reliable. Accordingly, I am unable to place much weight on this factor, which favours privacy protection. Similarly, I have not been provided with sufficient evidence to make a determination as to the weight which I might give to the potential negative impact that the disclosure of the record might have on the appellant and his present circumstances.
3. The information contained in the record was supplied implicitly in confidence to the Ministry by the affected person. Section 21(2)(h) is, therefore, a relevant consideration in the circumstances of this appeal, weighing against the disclosure of the information in the record.
4. Weighing the considerations in favour of the disclosure of the information in the record against the factors favouring privacy protection, I find that on balance, the factors favouring the protection of the privacy of the affected person outweigh those favouring the disclosure of the information to the appellant.
5. Section 21(4) has no application in the circumstances and the appellant has not argued that section 23 applies.
6. The disclosure of the information would result in an unjustified invasion of the personal privacy of the affected person and the record, accordingly, qualifies for exemption under section 49(b) of the Act.

ORDER:

I uphold the Ministry's decision to deny access to the record.

Original signed by: _____
Donald Hale

September 17, 1996 _____

Inquiry Officer