



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

ORDER P-1245

Appeal P-9500662

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act) of a decision of the Ministry of Community and Social Services (the Ministry). The appellant requested access under the Act to all records relating to an investigation conducted by an employee of the Ministry regarding complaints made by the appellant against another employee. The appellant's complaints were made in the context of a grievance. As a result, the complaint was not dealt with in accordance with the procedures established under the Ministry's Workplace Discrimination and Harassment Prevention Policy. Rather, the matter was investigated by the Ministry's Comprehensive Audit and Investigations Branch.

The Ministry located records responsive to the request and granted access to a large number of them. The Ministry denied access to the remaining records, in whole or in part, on the basis of the exemption in section 21 of the Act (invasion of privacy).

In responding to this request, the Ministry prepared an index for the appellant which divided the records into seven record categories, A through G. The following details the Ministry's decision with respect to each record responsive to the request.

- Access was granted in full to the documents in record category F, and to the following documents in the other six record categories: A-1; B-1 - 3, 5 - 7, 9 - 12; C-12 - 30, 34 - 58; D-3 - 32; E-1, 3 - 10, 13 - 26a; and G-1, 64 - 67, 69 - 94.
- Partial access was granted to the following documents: A-2 - 34; B-4, 8; C-1 - 11a, 31 - 33; D-1, 2, 33 - 38; E-2, 11, 12; and G-2, 3 - 50, 51 - 56, 57 - 62, 63, 68.
- The Ministry withheld the documents in record category D-39 - 96 in full.

The appellant appealed this decision.

This office sent a Notice of Inquiry to the Ministry and the appellant. In addition, a Notice of Inquiry was sent to the employee against whom the complaint was made (the respondent), and 12 other individuals who were identified in the records at issue (the affected persons). As it appeared that the records may also contain the appellant's personal information, the Notice of Inquiry sought representations on the application of section 49(b) (invasion of privacy).

Representations were received from the Ministry, the respondent and two affected persons. These latter three parties all objected to the disclosure of their personal information.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

In reviewing the records at issue, I find that all of them contain the personal information of the appellant. Moreover, each record at issue also contains the personal information of the

respondent and/or the other affected persons. I have set out below the particular personal information which has been withheld from disclosure.

- The names of the respondent and other affected persons and/or acronyms assigned to each name have been severed from Records A-2, 3 - 34; B-4, 8; C-1, 8, 10, 31 - 33; D-1, 2, 33 - 38, E-2, 11, 12; and G-2, 3 - 50, 51, 57, 63 and 68.
- Records A-3 - 34 and G-3 - 50 (which is a duplicate of A-3 - 34) are copies of the Investigation Report. Portions of these two records, which contain information regarding the allegations and observations of the affected persons, have been withheld. In the discussions below, I will only refer to Record A-3 - 34. My comments are equally applicable to Record G-3 - 50, however.
- The statements given by the respondent and other affected persons have been withheld in their entirety (Records D-39 - 96).

INVASION OF PRIVACY

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 requester access to that information.

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 and affected persons rely on sections 21(2)(f), (h) and (i) to support the decision to withhold the personal information at issue. The respondent claims that, in addition to the above, section 21(2)(e) is also relevant in the circumstances.

The appellant did not submit representations, however, in his letter of appeal he indicated that he is seeking this information in order to better represent himself. He states further that he believes he has a right to know the information that was given to the investigator, which was then used as the basis for a decision regarding his complaints. I am mindful of the fact that this investigation

was conducted in the context of a grievance. In my view, the appellant has implicitly raised the application of the factor in section 21(2)(d).

Sections 21(2)(d), (e), (f), (h) and (i) provide:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Sections 21(2)(e), (f), (h) and (i) are factors which weigh against disclosure of the information. Section 21(2)(d) is a factor which weighs in favour of disclosure. The preamble to section 21(2) indicates that, in deciding whether disclosure would be an unjustified invasion of personal privacy, "all the relevant circumstances" should be considered. In my view, there is also one "relevant circumstance" not listed in section 21(2) which weighs in favour of disclosure. This consideration, which has been referred to as "adequate degree of disclosure", has been applied in previous orders of the Commissioner in the context of harassment complaints. In my view, it is equally applicable in the circumstances of the investigation in this appeal.

Factors which weigh in favour of privacy protection

Section 21(2)(e)

The respondent expresses concern that, because of the confidential nature of the investigation, the affected persons may experience repercussions from the union and the appellant should the information they gave be disclosed. The respondent does not elaborate on the nature of the possible repercussions or how disclosure of information provided by them pursuant to this access request would expose any party unfairly to harm. The information provided to me in this regard is not sufficient to persuade me that either the respondent or the other affected persons will be exposed unfairly to harm should the information in the records be disclosed. Accordingly, I find that this factor is not relevant in the circumstances of this appeal.

Sections 21(2)(f) and (h)

These two sections relate to information which is highly sensitive (section 21(2)(f)), and information provided in confidence (section 21(2)(h)).

Many previous orders of the Commissioner's office have addressed arguments concerning the confidentiality of the harassment investigation process (which, in my view, is similar to the investigation which was conducted in this matter). They have concluded, generally, that despite assurances of confidentiality, complete confidentiality of information provided during these types of investigations cannot be guaranteed. Nevertheless, I accept that, in the circumstances of this appeal, the respondent and the affected persons did have an expectation of confidentiality regarding the information they provided. Therefore, I find that section 21(2)(h) is a relevant consideration with respect to this information.

Previous orders have also found that information provided in direct response to the complaint is among the most sensitive information contained in the records. Disclosure of this information would likely cause considerable personal distress to the affected persons (Order P-1014).

I agree with these conclusions. I am satisfied that disclosure of any information concerning or provided by the interviewees would cause considerable personal distress to these individuals, and section 21(2)(f), therefore, is also relevant.

Section 21(2)(i)

The respondent claims that at the time of the investigation, the matter was dealt with confidentially. As a result of this appeal, she believes that people who did not previously know about the investigation are now aware of it. In this regard, she suggests that her reputation may already be unfairly damaged. She states that, although the investigation "cleared me of all charges", disclosure of further information would be used to further damage her reputation, and that this would be unfair.

One affected person also indicates that disclosure of any information would be used to damage her reputation.

In my view, these parties have raised two concerns. They believe that disclosure of the fact that they have been identified or involved in the investigation of a complaint may unfairly damage their reputations. Moreover, they believe that the information they gave, if disclosed, may be used against them to further damage their reputations.

I accept that involvement in a complaint investigation may have some impact on an individual's reputation. I also accept that, in some cases, this impact may damage the reputation of an individual referred to in the records, and that in other cases, this damage may be unfair. Therefore, I accept that section 21(2)(i) is a relevant consideration in the context of complaint investigations. However, neither party indicates how this information may be used against them, or how its use might unfairly damage their reputations. In these circumstances, I find that, although relevant, this factor is not highly persuasive.

Factors which weigh in favour of disclosure

Section 21(2)(d)

Previous order of the Commissioner's office have found that proceedings before a grievance arbitration board pertain to a legal right of the parties, and that information directly related to the subject matter of the grievance (such as an investigation into a harassment complaint) would have a bearing on the determination of these rights (see, for example: Order P-1133). As this complaint was made and investigated in the context of a grievance, I accept that section 21(2)(d) is relevant in the circumstances of this appeal.

However, as I indicated above, the appellant has not submitted representations. The Ministry does not indicate whether the appellant's grievance has proceeded beyond the initial complaint. I have no evidence before me to suggest that this matter is proceeding further. Accordingly, in the absence of any information regarding this matter, I conclude that the relevance of this section is of little weight in the circumstances of this appeal.

Adequate Degree of Disclosure

This consideration relates to the fairness of administrative processes, and the need for a degree of disclosure to the parties which is consistent with the principles of natural justice. Previous orders have found that adequate disclosure is a fundamental requirement in the context of a harassment investigation (Order P-1014). In these types of investigations, both the complainant and the respondent are entitled to a degree of disclosure which permits them to understand the findings that were made and the reasons for the decision. In my view, these conclusions are similarly applicable to the investigation conducted in this matter.

As I indicated above, I have no evidence that the appellant's grievance will or has proceeded further. As a result, I do not know whether the appellant will receive any further disclosure of the investigation results in that context.

In reviewing the portions of the records which have been withheld, I note that portions of the Investigation Report pertain directly to allegations raised by the appellant. Further, I find that the statement given by the respondent responds directly to these allegations. The information contained in the statements provided by other affected persons has also been summarized and incorporated into the Investigation Report. In the circumstances of this appeal, I find that the consideration requiring adequate disclosure is relevant to this personal information.

Conclusions

In considering the above, I have weighed the factors favouring disclosure of the personal information at issue to the appellant against the factors favouring privacy protection. I will summarize briefly my findings regarding the applicable factors.

As I indicated above, the information severed from Records A-2, 3 - 34; B-4, 8; C-1, 8, 10, 31 - 33; D-1, 2, 33 - 38, E-2, 11, 12; and G-2, 3 - 50, 51, 57, 63 and 68 consists of the names of the respondent and other affected persons and/or acronyms assigned to each name. In my view,

none of this information relates to the substance of the complaint. I find further that the factors against disclosure in sections 21(2)(f), (h) and, to a lesser degree, (i) are relevant in the circumstances. In balancing the interests of the appellant and that of the affected persons, I find that, with one exception, disclosure of the information described above would constitute an unjustified invasion of personal privacy. Accordingly, I find that this information is exempt under section 49(b).

Records A, B, D-33 - 38 and G contain references to the respondent's name. It is clear that, having filed a grievance against her, the appellant is well aware of the identity of the respondent, and in fact, was the recipient of or copied on two of the documents at issue. In my view, disclosure of the respondent's name to him would not constitute an unjustified invasion of personal privacy in the circumstances of this appeal. Accordingly, this information is not exempt under section 49(b). The respondent's name is interspersed throughout these records and is clearly identifiable. Therefore, I will order the Ministry to locate this information in Records A, B, D-33 - 38 and G, and disclose it to the appellant.

The following pages of the Investigation Report contain information regarding the allegations: A-11a, 12, 14, 14a, 18a, 19, 19a, 22a, 23 and 24. In addition, as I indicated above, the statement given by the respondent also addresses the allegations (Record D-40 - 51 and 65 - 66). I find that the factors favouring privacy protection in sections 21(2)(f), (h) and, to a lesser degree, (i) are relevant with respect to these records. However, because this information relates to the direct response to the complaint, I find that the unlisted consideration pertaining to "Adequate Degree of Disclosure", which favours disclosure, is also relevant.

In the circumstances of this appeal, I find that the consideration favouring disclosure is more compelling, and disclosure of these parts of Record A-11a, 12, 14, 14a, 18a, 19, 19a, 22a, 23 and 24, and Record D-40 - 51 and 65 - 66 would not be an unjustified invasion of personal privacy. Accordingly, these portions of the records are not exempt under section 49(b) and should be disclosed to the appellant. I have highlighted the portions of Record A-11a, 12, 14, 14a, 18a, 19, 19a, 22a, 23 and 24 which should be disclosed on the copy of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.

In my view the information in the remaining statements contained in Record D-39 - 96 has been sufficiently summarized in the portions of the records which I have ordered disclosed. Disclosure of these statements would, in my view, unnecessarily risk revealing the identities of the affected persons, and the factors favouring privacy protection in sections 21(2)(f), (h) and, to a lesser degree, (i) are more compelling with respect to this information. Accordingly, I find that the remaining portions of this record are exempt under section 49(b).

ORDER:

1. I order the Ministry to disclose to the appellant the information contained in the records as set out below by sending him copies of the pages which contain this information on or before **September 25, 1996**, but not earlier than **September 20, 1996**.
 - the name of the respondent wherever it appears in Records A, B, D-33 - 38 and G,

- the portions of Record A-11a, 12, 14, 14a, 18a, 19, 19a, 22a, 23 and 24 which are highlighted in yellow on the copy of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order,
 - Record D-40 - 51 and 65 - 66 in its entirety.
2. I uphold the Ministry's decision to withhold the remaining personal information contained in the records at issue.
 3. 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 which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ August 21, 1996