



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

ORDER P-1300

Appeal P_9600337

Criminal Injuries Compensation Board



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NATURE OF THE APPEAL:

The Criminal Injuries Compensation Board (the Board) received a request under the Freedom of Information and Protection of Privacy Act for access to a claim for compensation filed by an named individual (the affected person). The Board granted partial access to the application for compensation and denied access to the remaining records on the basis of sections 21(1) and 49(b) of the Act. The requester appealed the denial of access.

The requester, now the appellant, is accused by the affected person of alleged sexual abuse some thirty years ago. The affected person is a former patient of the requester. The affected person is also pursuing a complaint through the College of Physicians and Surgeons of Ontario (the College) and a civil suit through the courts.

The record withheld by the Board includes applications, reason for late filing form, medical reports and invoices for treatment received, correspondence and handwritten notes. The record consists of pages 1-2 and 6-61 (withheld in their entirety) and pages 3-5 (withheld in part).

This office provided a Notice of Inquiry to the appellant who is represented by counsel, the affected person and the Board. Representations were received from all 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 at issue and I find that while it contains some information relating to the appellant, for the most part, it contains the personal information of the affected person and other identifiable individuals. However, given the circumstances of the case, I find that the record contains the personal information of the appellant, the affected person and other identifiable individuals.

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 personal information of both the appellant and other individuals, and the Board determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Board 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 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 the 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 Board 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.

The Board has made extensive representations on each page of the record. As I have indicated previously, the record consists of the application cover sheet, reason for late filing, doctors' and medical reports, medical invoices, correspondence and handwritten notes. The Board submits that the information in the record relates to the affected person's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation and therefore the presumption in section 21(3)(a) applies. The Board submits that the presumptions in sections 21(3)(d), (e) and (f) also apply to parts of the record which contain the curriculum vitae of a medical service provider, and the income and employment status of the affected person.

The Board has also indirectly raised the factor in section 21(2)(e) (individual to whom the information relates will be exposed unfairly to pecuniary or other harm), arguing that in the particular circumstances of this case, the affected person's home address, date of birth, names of family members and home telephone number should not be disclosed to the appellant.

The appellant argues that the consideration found in section 21(2)(d) (fair determination of rights) is a factor weighing in favour of disclosure of the information contained in the record. The appellant points out that the affected person has launched a complaint with the College of Physicians and Surgeons and a civil suit through the courts in which he is claiming damages for a sexual assault alleged to have occurred thirty years ago. The appellant submits that as a party to proceedings under the Compensation for Victims of Crime Act, he is entitled to disclosure of all the information relied upon by the Board.

I have considered the representations of the parties and have carefully reviewed the information in the record. Balancing the privacy rights of the affected person against the appellant's right to information which will assist him in the College complaint and the civil suit is very difficult. I am mindful, however, of the fact that the appellant is aware of the specifics of the assault charges against him. I note also that under the disclosure procedures of the College complaint process and the civil suit, he may receive information that is precluded from disclosure under the Act. I make the following findings:

1. I find that most of the information in the records falls within the presumptions provided by sections 21(3)(a), (d) and (f).

2. The Divisional Court's decision in John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that factors in section 21(2) cannot be used to rebut the presumptions in section 21(3). Accordingly, the factor in section 21(2)(d) raised by the appellant cannot be used to apply to the information to which I have found sections 21(3)(a), (d) and (f) apply. I find that sections 21(4) and 23 are not applicable.
3. With respect to the remaining information in the record i.e. date of birth, home address and telephone number, and names of family members, I find that the considerations raised by the appellant and the Board (sections 21(2)(d) and (e)) are both relevant. However, given the nature of the information, I find that the factor in section 21(2)(e) which weighs in favour of privacy has greater relevance in the circumstances of this case.
4. Accordingly, I find that the record is exempt from disclosure under section 49(b) of the Act.

ORDER:

I uphold the decision of the Board.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ November 21, 1996