



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

ORDER P-1318

Appeal P_9600317

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 a copy of all medical, psychiatric and institutional records relating to the requester's incarceration at the Toronto Jail between December 17, 1994 and December 24, 1994.

The Ministry located a number of responsive records and granted partial access to them, claiming the application of the following exemptions contained in the Act to deny access to the remainder:

- law enforcement - section 14(2)(a)
- invasion of privacy - section 49(b)
- discretion to refuse requester's own personal information - section 49(a)

The requester (now the appellant) appealed this decision. The records at issue in this appeal consist of a one-page Prisoner Transportation Sheet, an Incident Report, 20 Occurrence Reports, three Misconduct Reports, two pages of handwritten notes, along with the undisclosed portions of an Executive Summary and an Investigation Report, totaling 52 pages.

A Notice of Inquiry was provided to the appellant, the Ministry and 22 other individuals whose interests may be affected by the outcome of this appeal (the affected persons). Representations were received from the appellant and the Ministry only.

In its representations the Ministry indicated that it was no longer relying on the application of section 14(2)(a) and granted access to additional portions of eight pages of the Investigation and Incident Reports. Because section 14(2)(a) was the only exemption claimed for the Prisoner Transportation Sheet, and no mandatory exemptions apply to it, it should be disclosed to the appellant.

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 Order P-721, which is relied upon by the Ministry, Assistant Commissioner Irwin Glasberg held that:

Previous orders have held that information about an employee does not constitute that individual's personal information where the information relates to the individual's employment responsibilities or position. Where, however, the information involves an evaluation of the employee's performance or an

investigation into his or her conduct, these references are considered to be the individual's personal information.

I adopt the Assistant Commissioner's reasoning for the purposes of this appeal.

The records at issue relate to two "use of force" incidents in which the appellant was involved while he was an inmate at the Toronto Jail and the subsequent investigation into allegations that the force used by several of the affected persons was excessive. Clearly, the records contain the personal information of the appellant. Since the records also relate directly to an evaluation of the conduct of several of the affected persons, who are jail employees, the records also contain the personal information of these individuals.

I find that the records also contain information which relates to other identifiable individuals. However, this information makes reference to these individuals in their employment or professional capacities only and cannot, therefore, qualify as their personal information. In addition, with respect to the two pages of notes, only parts of these two pages relate to the incidents involving the appellant. My decision regarding access to these pages will be restricted to those parts which contain the personal information of the appellant.

INVASION OF PRIVACY

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 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 argues that the disclosure of the personal information would unfairly expose the affected persons to pecuniary or other harm (section 21(2)(e)), that it is highly sensitive (section 21(2)(f)) and that it was supplied by the affected persons in confidence (section 21(2)(h)). These are all considerations favouring the non-disclosure of personal information.

The appellant submits that he was injured as a result of these altercations with jail employees. He argues that the disclosure of the information contained in the records would not, therefore, result in an unjustified invasion of the personal privacy of the affected persons. Having reviewed the representations and the records, I have made the following findings:

- (1) The Ministry has not provided any substantial basis for its assertion that disclosure of the information relating to the affected persons would expose these individuals **unfairly** to pecuniary or other harm. I find, therefore, that section 21(2)(e) is not a relevant consideration with respect to the personal information contained in the records.
- (2) The first and second page of the Investigation Report contains a list of the jail personnel who were involved in the incidents, along with their "Years of Service". It is my view that the information which describes their years of service qualifies as the employment history of these individuals and, therefore, falls within the ambit of the presumption found in section 21(3)(d) of the Act. None of the exceptions under section 21(4) apply and the appellant has not raised the possible application of section 23 of the Act. Therefore, I find that the disclosure of the information under the heading "Years of Service" would result in a presumed unjustified invasion of the personal privacy of the affected persons.
- (3) I find that some of the information contained in the records may properly be characterized as highly sensitive within the meaning of section 21(2)(f). However, I find that the majority of the "highly sensitive" information relates only to the appellant. Section 21(2)(f) is not a relevant consideration with respect to information which relates to the individual who requests it, in this case the appellant.

However, some of the information relating to the affected persons, particularly that which relates to injuries which they may have sustained in the second altercation with the appellant, as well as the comments made by or about the affected persons which are not directly related to the incident involving the appellant may be properly considered to be highly sensitive within the meaning of section 21(2)(f).

- (4) While section 21(2)(h) is a relevant consideration in the circumstances of this appeal, in matters involving an investigation into the conduct of public servants, it is not reasonable to expect complete confidentiality. Fairness demands that the appellant be made aware of the circumstances surrounding the investigation of his complaint. In addition, where, as in this case, the investigation has been completed, it is essential that the parties (including the appellant) be advised as to how the complaint was resolved and why.

Having considered all of the circumstances of this appeal and balanced the appellant's right to access his personal information against the privacy interests of the affected persons, I find that disclosure of certain portions of the records would result in an unjustified invasion of the personal privacy of the affected persons. These include the recitation of the injuries suffered by several of the affected persons and the comments made by or about the affected persons which were unrelated to the incidents involving the appellant and are contained in several of the occurrence reports. In conclusion, I find that the disclosure of this information would result in an unjustified invasion of the personal privacy of the affected persons and it is, accordingly, exempt under section 49(b).

I have highlighted on the copy of the records attached to the Ministry's copy of this order those portions of the records which are not to be disclosed.

ORDER:

1. I order the Ministry to disclose the records at issue to the appellant in accordance with the highlighted copy which I have attached to the Ministry's copy of this order by **January 20, 1997** but not before **January 17, 1997**. The highlighted portions of the records should **not** be disclosed.
2. I uphold the Ministry's decision not to disclose the information which I have highlighted on the copy of the records which I have attached to the copy of this order and provided to the Ministry's Freedom of Information and Privacy Protection Co-ordinator.
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: _____

Donald Hale
Inquiry Officer

December 18, 1996