



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

ORDER P-1344

Appeal P_9600379

Ministry of Labour



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BACKGROUND:

An employee of a University (the University) filed an occupational disease-related claim with the Workers' Compensation Board (the WCB). The WCB asked the Ministry of Labour (the Ministry) to collect information due to certain unresolved issues relating to the claim. The requester in this appeal represents the University.

NATURE OF THE APPEAL:

The requester submitted a request to the Ministry under the Freedom of Information and Protection of Privacy Act (the Act) for access to its file relating to this matter.

The Ministry located records responsive to the request and provided access to some of them. As the Ministry determined that the interests of the employee (herein referred to as the affected person) would be affected by disclosure of the remaining records, it notified her pursuant to section 28 of the Act. The affected person objected to disclosure of the remaining records, and the Ministry denied access to them on the basis of the following exemption under the Act:

- invasion of privacy - section 21(1)

The requester (now appellant) appealed the Ministry's decision.

During the course of this appeal, the appellant raised the possible application of section 23 of the Act, the so-called public interest override.

The appellant eliminated all medical reports, copies of correspondence sent to or from the appellant, and copies of WCB correspondence/documents from the scope of the appeal.

This office provided a Notice of Inquiry to the appellant, the Ministry and the affected person. Representations were received from all parties.

The records at issue in this appeal consist of 17 pieces of correspondence between the Ministry and representatives of the affected person, documents relating to this correspondence, and attachments to this correspondence with the exception of those documents which the appellant eliminated. The correspondence spans the time period of December, 1995 to early June, 1996.

DISCUSSION:

INVASION OF PRIVACY

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 correspondence between the affected person and the Ministry, as well as all related documents, and I find that the information contained in them falls within the definition of

“personal information” in section 2(1). I find that the personal information at issue pertains to the affected person’s occupational health concerns and thus qualifies as her personal information. Some of the records also contain information pertaining to her family, and I find that this information qualifies as their personal information.

The records also contain critical references to other individuals involved in the investigation of the claim and in the matter generally. All of these individuals are referred to in their professional capacities. It has been established in a number of previous orders that information pertaining to an individual in his or her professional capacity or in the execution of employment responsibilities is not “personal information” within the meaning of section 2(1).

I find, however, that the information in the records consists primarily of the opinions of the affected person about the job performance or employment related activities of these individuals. As such, I find that much of the information contained in these records goes beyond what would normally be considered to be employment-related information and, accordingly, is properly characterized as the personal information of the individuals referred to in the records.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. One of these circumstances is found in section 21(1)(f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

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 submits that the records contain medical information and employment history in accordance with the presumptions under sections 21(3)(a) and 21(3)(d). The Ministry also argues that the information is highly sensitive in accordance with section 21(2)(f), and that it was supplied in confidence pursuant to section 21(2)(h).

The appellant’s representations reveal that the affected person has published some information on an Internet web site, and suggest that the public accessibility of this information is a relevant consideration in favour of disclosure.

The affected person states that the investigation by the Ministry revolved around her health related concerns. She submits that the records contain her private information and she objects to its release.

Although medical reports have been eliminated from the scope of this appeal, portions of the records at issue contain the affected person's medical information, qualifying for exemption under section 21(3)(a). The records also refer to the affected person's former employment with the University. However, I find that, in the context of this appeal, this does not qualify as employment history pursuant to section 21(3)(d). Section 21(4) does not apply to any parts of the records which I have found exempt under sections 21(3)(a).

Once a record is found to fall within a section 21(3) presumption, the factors in section 21(2) cannot be used to rebut the presumption (John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767). Accordingly, the portions of the records to which I have found section 21(3)(a) applies are exempt under section 21(1).

Turning to the considerations under section 21(2) with respect to the balance of the personal information in the records, I find that those records which consist of correspondence from the affected person to the Ministry, were supplied in confidence pursuant to section 21(2)(h). I also find that the remaining records contain highly sensitive personal information, qualifying for exemption under section 21(2)(f).

In my view, because the affected person has chosen to make her health related concerns public and to selectively provide details in support of these concerns, she has placed much of her own personal information in the public arena. In my view, this unlisted consideration favours disclosure and is relevant in the circumstances.

I note, however, that although the affected person has chosen to display an account of events in a public forum, it does not appear that all of the information in the records at issue are posted on the web site. Moreover, although the affected person indicates on the web site that certain documents will be provided upon request, this is within her discretion. The affected person has **not** consented to the disclosure of these particular records containing her personal information to the appellant in the circumstances of this appeal.

I have weighed the consideration in favour of disclosing the information in the record against the factors favouring privacy protection. I find that on balance, the factors favouring the protection of privacy outweigh the consideration favouring the disclosure of the affected person's information.

Section 21(4) has no application in the circumstances.

Therefore, I find that the balance of the information at issue is properly exempt under section 21(1) of the Act.

PUBLIC INTEREST IN DISCLOSURE

The appellant argues that there exists a public interest in the disclosure of the information at issue under section 23 of the Act, which states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called “public interest override”: there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

The appellant’s representations refer at great length to the Internet web site set up by the affected person with details of her story. The appellant emphasizes the frequency of public use and the accessibility of the web site, and has provided various parts of the web site documents.

Although the records at issue raise some concerns which may be of interest to the public, I do not find that there is a compelling public interest in the disclosure of the particular records at issue in this appeal which clearly outweighs the purpose of the exemption in section 21. Moreover, it is evident that there is or has been considerable acrimony between the appellant and the affected person in connection with the affected person’s claim. In my view, this raises a private rather than public interest in disclosure of the records. For these reasons, I find that section 23 of the Act does not apply.

ORDER:

I uphold the Ministry’s decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ February 11, 1997