



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1436

Appeal P_9700148

Ministry of Community and Social Services



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BACKGROUND:

In August, 1996, the appellants submitted a request to the Ministry of Community and Social Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). This request was for two specific letters written by an adoption practitioner to the Ministry's adoption unit, concerning the proposed adoption of two children from outside Canada by the appellants. The adoption practitioner conducted a home study to assess the suitability of the appellants as adoptive parents.

The Ministry originally responded to the request by denying access to the two letters, based on the confidentiality provision in section 165 of the Child and Family Services Act (the CFSA), which prevails over the Act by virtue of section 67(2) of the Act. In particular, the Ministry relied on section 165(5) of the CFSA, which relates to the application of the Act to information about an adoption. The appellants appealed this decision, and Appeal Number P-9600409 was opened.

During the processing of Appeal P-9600409, the appellants indicated that they already had a copy of one of the letters. Accordingly, the appeal only pertained to one letter, dated June 19, 1996. This letter provides details of a negative reference which formed the basis of the adoption practitioner's recommendation against the adoption. As a result of this recommendation, the adoption did not take place.

Appeal P-9600409 resulted in Order P-1380 in which Inquiry Officer John Higgins found that section 165(5) of the CFSA is not applicable in the circumstances. He ordered the Ministry to issue an access decision under the Act concerning the record at issue.

NATURE OF THE APPEAL:

The Ministry issued a decision regarding the record at issue on May 9, 1997. In this decision, the Ministry denied access to the record on the basis of the exemptions in sections 21 and 49(b) of the Act (invasion of privacy). The appellants appealed this decision.

This office provided a Notice of Inquiry to the appellants, the Ministry and the adoption practitioner. Representations were received from all three parties.

The record at issue consists of a two-page letter from the adoption practitioner to the Ministry's Adoption Unit.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, personal information is defined in part to mean recorded information about an identifiable individual. The record contains references made by an anonymous referee about the appellants. The appellants argue that, since the record contains

another individual's views about them, it contains only their personal information. In my view, in the context of the adoption home study, the fact that the referee has provided information in relation to the assessment qualifies as that individual's personal information. Moreover, I find that in this context, it would be possible for the appellants to identify the referee. Consequently, I find that the record contains the personal information of both the referee and the appellants. Neither the Ministry nor the adoption practitioner claim that the record contains the personal information of the adoption practitioner. As this letter was written by the adoption practitioner in her professional capacity, I find that it does not contain her personal information.

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 appellants and another individual 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 appellants access to that information. In this situation, the appellants are not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of personal privacy of another person. Since the appellants have a right of access to their own personal information, the only situation under section 49(b) in which they can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's 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 in section 21(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act 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), as well as all other considerations that are relevant in the circumstances of the case.

The Ministry submits that the presumption in section 21(3)(g) and the factors in sections 21(2)(f) and (h) are applicable in the circumstances of this appeal. These sections provide:

- (2) 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,
 - (f) the personal information is highly sensitive;
 - (h) the personal information has been supplied by the individual to whom the information relates in confidence;

- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations.

With respect to the factors in section 21(2), the Ministry states that its Guidelines for the Assessment of Adoptive Applicants require that its social workers attempt to determine whether referees are willing to have their concerns shared with the adoptive applicants. If they consent, this information is shared. However, the Ministry submits that in other cases, revealing the information and its source could have extremely serious and long-term implications for the referees. The Ministry states that it is doubtful that any information would be given by such referees without an assurance of confidentiality.

The adoption practitioner essentially reiterates the Ministry's representations on this issue and confirms that the referees interviewed by her "spoke only on the condition of strictest confidentiality".

The appellants argue that since it is likely that they already know, or know of, the anonymous source, disclosure of the letter would not disclose any information that they do not already know. The appellants also submit that disclosure of the letter would not constitute an unjustified invasion of privacy because they are already aware of some of the circumstances through which the anonymous source came to make his or her allegations. Finally, the appellants argue that the anonymous source is not an innocent third party, but has willingly become involved in the matter.

As I indicated above, the information (allegations) provided by the anonymous source resulted in the adoption practitioner's recommendation against the adoption. Consequently, the adoption did not take place. The appellants state that they still do not know what allegations have been made against them. Further, they are unable to respond to the allegations, or to try to take steps to correct the problems identified. In my view, the appellants have raised a relevant consideration pertaining to the "fairness" of the adoption process.

The information at issue contains the concerns raised by the referee regarding the suitability of the appellants as adoptive parents. By its very nature, I find that this information is highly sensitive within the meaning of section 21(2)(f). I am also satisfied that the information was provided to the Ministry in confidence and section 21(2)(h) is also relevant. Finally, I find that fairness in the adoption process would require that the appellants be provided with sufficient information to understand the reasons for a negative assessment. Accordingly, I find that this consideration is also relevant.

In weighing the interests of the appellants in disclosure of the information provided by the anonymous source in the letter against the privacy interests of this individual in the protection of his or her privacy, I find that the factors against disclosure weigh more heavily. In particular, I find that, in order to protect the interests of children to be placed in prospective adoptive families, the process of assessing the home environment must provide for a degree of

confidentiality for individuals providing references pertaining to the prospective adoptive parents. I find, however, that this interest only pertains to the information in the record under the four bullet points on page 2 of the letter, and the reference to the gender of the anonymous source. The remaining information in the record would not, in my view, reveal this individual's identity or comments, and the factor favouring disclosure weighs more heavily in the balance.

Therefore, I find that the information under the four bullet points on page 2 of the letter and the reference to the gender of the anonymous source are properly exempt under section 49(b). The remaining information in the record is not exempt and should be disclosed to the appellants.

Because of the findings I have made, it is not necessary for me to consider the application of section 21(3)(g).

ORDER:

1. I uphold the Ministry's decision to withhold the information under the four bullet points on page 2 of the letter, and the reference to the gender of the anonymous source.
2. I order the Ministry to disclose the remaining information in the record to the appellants by **September 5, 1997** but not before **September 2, 1997**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellants pursuant to Provision 2.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ August 1, 1997