



Information and Privacy
Commissioner/Ontario

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

ORDER P-1482

Appeal P_9700149

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a copy of records relating to “all instances in which the Attorney General has been asked to order an investigation into an alleged hate crime or to consent to a prosecution under the hate law of the Criminal Code”.

The Ministry located 269 records, totalling approximately 2968 pages, which were responsive to the request. The Ministry granted partial access to approximately 920 pages, claiming exemptions pursuant to sections 14(1)(a), (b), 19 and 21 of the Act for the undisclosed information. The Ministry denied access in full to 48 pages pursuant to section 21 of the Act and approximately 1400 pages pursuant to both sections 20 and 21 of the Act. In addition, 200 of the 1400 pages to which access was denied under section 20 of the Act were also denied pursuant to sections 14(1)(a) and (b). Finally, the Ministry denied access to approximately 600 pages pursuant to section 22(a) of the Act and informed the appellant that it would indicate where this information was publicly available. The appellant appealed the Ministry’s decision to deny access.

During mediation, the Ministry provided the appellant with information with respect to the location of the 600 pages of publicly available records. In addition, the appellant advised the Appeals Officer that she did not require:

- (1) any personal information, with the exception of the personal identifiers of individuals who appeared to be acting in their professional or employment capacities at the time the records were created (Records 3-4, 14, 21, 30-31, 34, 37, 60, 62-64, 68, 70, 72-73, 76-79, 87, 91-92, 99, 111, 145, 159-160, 166, 172, 174-175, 177, 178-180, 185, 197-198, 202, 205-207, 210, 221, 224, 228-229, 233, 250 and 255);
- (2) any records which were currently the subject of an ongoing law enforcement matter or investigation for which the section 14(1)(a) and (b) exemptions had been claimed; and
- (3) the records to which section 19 of the Act had been applied, except Records 224 and 245.

The 48 records to which access was denied in full pursuant to section 21 of the Act are handwritten letters or notes. The appellant agreed to the Ministry’s offer to type these letters and notes and then sever personal identifiers from them for a fee. In addition to the above, the records, either in whole or in part, for which section 20 of the Act has been claimed (Records 3_5, 15, 17-20, 23, 26-36, 40, 43-44, 48, 52, 87, 91-94, 98-99, 108, 141, 143, 155-156, 158, 162_164, 176, 178, 180, 184-185, 187, 189, 197-198, 200, 202-205, an unnumbered record which follows Record 206, 207-210, 215, 219, 221, 223, 226, 231-232, 238, 244, 250 and 261-264) remain at issue in this appeal. Consequently, as a result of the mediation efforts of all parties there remain 102 records at issue, either in whole or in part.

RECORDS AND EXEMPTIONS AT ISSUE

During mediation, as noted above, the appellant indicated that she was not interested in receiving records to which sections 14(1)(a) and (b) had been applied. In addition, she indicated that she was not pursuing those records to which section 19 had been applied except for Records 224 and 245. In its representations, the Ministry states that the exemptions in sections 14(1)(a) and (b) had also been claimed for these two records. As the appellant is not interested in records to which section 14 has been applied, it would serve no useful purpose to adjudicate the section 19 claim. Accordingly, I find that these two records are not at issue in this appeal in accordance with the appellant's direction concerning section 14(1).

Therefore, the exemptions which remain at issue, and the records to which they have been applied, consist of the following:

- danger to safety or health - section 20 (Records 3-5, 15, 17-20, 23, 26-36, 40, 43-44, 48, 52, 87, 91-94, 98-99, 108, 141, 143, 155-156, 158, 162-164, 176, 178, 180, 184-185, 187, 189, 197-198, 200, 202-205, an unnumbered record which follows Record 206, 207-210, 215, 219, 221, 223, 226, 231_232, 238, 244, 250 and 261-264); and
- invasion of privacy - section 21(1) (Records 3-4, 14, 21, 30-31, 34, 37, 60, 62-64, 68, 70, 72-73, 76-79, 87, 91-92, 99, 111, 145, 159-160, 166, 172, 174-175, 177, 178-180, 185, 197-198, 202, 205-207, 210, 221, 228-229, 233, 250 and 255).

This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from the Ministry only.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. The Ministry submits that the name, address and any information leading to the identification of individuals (other than those acting in an official capacity as government officials or those for whom consent has been obtained) mentioned in the records constitutes personal information. The Ministry submits further that the "official capacity" exception to the personal information exemption only applies to officials of institutions subject to the Act. The Ministry is of the view that the sensitive and inflammatory nature of much of the information contained in the records mandates that a high degree of vigilance be exercised in ensuring that the privacy of named individuals is protected.

I do not agree. It is clear from the records that many of the individuals referred to in the records, other than Ministry or other government personnel, are acting in their professional capacities as an employee, elected official or spokesperson for an organization, and that their involvement in the records is in that capacity. In my view, the sensitivity of the subject matter in the circumstances of this appeal does not alter the nature of this capacity in such a way that the

information should be protected. Accordingly, I find that, with certain exceptions, the information which has been withheld from Records 3-4, 14, 21, 30-31, 34, 37, 60, 62-64, 68, 70, 72-73, 76-79, 87, 91-92, 99, 111, 145, 159-160, 166, 172, 174-175, 177, 178-180, 185, 197-198, 202, 205-207, 210, 221, 228-229, 233, 250 and 255 does not qualify as personal information.

Some of the records contain the names and addresses of members of the public who have written to the government, or identify individuals in whom the government has shown an interest. These portions of the records qualify as the personal information of the individuals to whom it relates. Because the appellant has indicated that she is not interested in receiving this information, it is not at issue. I have highlighted the personal information on the copies of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order. This information should not be disclosed.

As no other exemptions have been claimed for the non-highlighted information on Records 14, 21, 37, 60, 62-64, 68, 70, 72-73, 76-79, 111, 145, 159-160, 166, 172, 174-175, 177, 179, 228_229, 233 and 255, this information should be disclosed to the appellant. I will address the non-highlighted portions of the remaining records below under the discussion "Danger to Safety or Health".

DANGER TO SAFETY OR HEALTH

Section 20 of the Act states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The Ministry submits that the records exempted under section 20 of the Act are rife with offensive, inflammatory and hateful comments or images directed at identifiable groups. The Ministry believes that publication of such material can reasonably be expected to seriously threaten the health and/or safety of individuals targeted by such hate propaganda.

The Ministry made the same arguments in Appeal Number P-9700089 which dealt with similar types of records as are present in the current appeal. I disposed of the issues in that appeal in Order P-1452. In that order, I stated:

Section 20 stipulates that the Ministry may refuse to disclose a record where doing so **could reasonably be expected to** result in a specified type of harm. Section 20 similarly requires that the expectation of a serious threat to the safety or health of an individual, should a record be disclosed, must not be fanciful, imaginary or contrived but rather one which is based on reason. The Ministry must offer sufficient evidence to support the position that the record at issue could reasonably be expected to seriously threaten the safety or health of an individual.

The records at issue in this discussion consist of articles regarding propaganda and the holocaust, other atrocities reported in the media, Nazism, censorship and world events. Many of the articles have commentary attached to them in the same

vein as much of the literature at issue. As I indicated above, the appellant is referred to in many of them as author or publisher of the materials.

In the circumstances of this appeal, the appellant is clearly aware of the literature, having been involved in its dissemination and production. In my view, the Ministry has not established that disclosure of this information to the appellant would result in the harms referred to in section 20 as this information has already been published.

Therefore, while I accept that the materials at issue in this appeal may be extremely offensive, I do not accept the Ministry's arguments that section 20 applies to them.

In the current appeal, the appellant is not the author or publisher of much of the information in the records. However, I find that the reasoning in Order P-1452 is similarly applicable. Many of the records have been published, and the appellant is clearly aware of their nature. I am not persuaded by the Ministry that disclosure of these previously published records to the appellant could reasonably be expected to result in the harms contemplated by this section. Therefore, I find that section 20 has no application.

Accordingly, Records 3-5, 15, 17-20, 23, 26-36, 40, 43-44, 48, 52, 87, 91-94, 98-99, 108, 141, 143, 155-156, 158, 162-164, 176, 178, 180, 184-185, 187, 189, 197-198, 200, 202-205, an unnumbered record which follows Record 206, 207-210, 215, 219, 221, 223, 226, 231-232, 238, 244, 250 and 261-264 are not exempt under section 20.

ORDER:

1. I uphold the Ministry's decision to withhold the information which has been highlighted on the copies of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Ministry to disclose the remaining information in the records by providing a copy of these records to the appellant by **November 27, 1997**.
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 2.

Original signed by: _____
Laurel Cropley
Inquiry Officer

November 6, 1997