



Information and Privacy
Commissioner/Ontario

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

ORDER P-1439

Appeal P_9700086

Ontario Insurance Commission



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

A request was made to the Ontario Insurance Commission (the OIC) under the Freedom of Information and Protection of Privacy Act (the Act) by a firm of solicitors on behalf of a client. The client has commenced a class action on behalf of herself and all others who purchased “vanishing premium” policies from a specified insurance company through a named individual. The request was for access to records of all complaints and their disposition against the named individual (the affected person), and all complaints and their disposition about “vanishing premium” policies against the insurance company. I will refer to the client as the appellant throughout this order.

The OIC located 29 pages of responsive records and denied access to them in full on the basis of section 21(1) of the Act (invasion of privacy). The appellant appealed this decision.

This office sent a Notice of Inquiry to the appellant’s counsel and the OIC. Because some of the records appeared to contain information about the appellant, the Notice raised the possible application of section 49(b) of the Act (invasion of privacy). Representations were received from both parties.

The records at issue consist of the following:

- **Record 1** - a two-page letter of complaint to the OIC from a named insurance agency, plus two one page attachments and copies of portions of two insurance policies;
- **Record 2** - a three-page letter of complaint to the OIC from a named individual;
- **Record 3** - a four-page letter of complaint to the OIC from another named individual, plus seven pages of attachments;
- **Record 4** - a one-page letter to the OIC from a named life insurance company.

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. I have reviewed the records and find as follows:

- Portions of Record 1 contain the personal information of the appellant, the affected person and other identifiable individuals. However, several pages of the attachments to Record 1 only contain the personal information of the appellant. These attachments are severable from the remaining portions of Record 1 and do not reveal any of the information contained in the letter of complaint or other attachments. Neither section 21(1) nor

section 49(b) applies to records which contain only the personal information of the appellant. Accordingly, I will order the OIC to disclose these pages to the appellant. For clarity, I have attached the pages which are to be disclosed to the copy of this order which is being sent to the OIC's Freedom of Information and Privacy Co-ordinator;

- Record 4 contains the personal information of the appellant, the affected person and other identifiable individuals;
- Records 2 and 3 contain only the personal information of the affected person and other identifiable individuals. These two records do not contain the appellant's 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 appellant and other identifiable individuals and the OIC determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the OIC has the discretion to deny the appellant access to that information. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy.

Where, however, a record only contains the personal information of other individuals, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. In this appeal, I have determined that Records 2 and 3 contain the personal information of the affected person and other individuals and do not contain any information relating to the appellant. I will therefore make my finding on these records under section 21(1) of the Act. I have also determined that Record 1 and 4 contain the personal information of both the appellant and other identifiable individuals and my finding on these records will be made under section 49(b) of the Act.

The OIC claims that disclosure of the records would constitute a presumed unjustified invasion of privacy under sections 21(3)(b), (f) and (g). These sections provide:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

- (g) consists of personal recommendations or evaluations, character references or personnel evaluations.

The OIC also claims that the factors in sections 21(2)(f), (h) and (i) are relevant in the circumstances of this appeal. These sections state:

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; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The appellant claims that the factor in section 21(2)(d) (fair determination of rights) is relevant in the circumstances. She also raises the application of section 23, the so-called “public interest override”.

With respect to the presumption in section 21(3)(b), the OIC submits that the personal information was compiled and is identifiable as part of the complaint and investigation process into a possible violation of law under the Insurance Act. In this regard, it claims that the presumption in section 21(3)(b) applies to such information.

Having reviewed the records and considered the submissions of the parties, I find that disclosure of the personal information of the individuals other than the appellant would fall within the presumption in section 21(3)(b) of the Act.

Even if I were to find that the factor in section 21(2)(d) is relevant in the circumstances of this appeal, the Divisional Court’s decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that the factors and considerations in section 21(2) cannot be used to rebut the presumptions in section 21(3).

Because of the findings I have made regarding the application of section 21(3)(b), it is not necessary for me to consider the remaining provisions in sections 21(2) and (3) relied on by the OIC.

None of the information in the records falls within section 21(4). Accordingly, I find that Records 2 and 3 are properly exempt under section 21(1), and the remaining portions of Record 1 and Record 4 are exempt under section 49(b).

COMPELLING PUBLIC INTEREST

As mentioned above, the appellant claims that the public interest override provided by section 23 applies in the circumstances of this appeal. This section 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. [emphasis added]

As I indicated above, the appellant has commenced a class action on behalf of herself and all others who purchased “vanishing premiums” from the insurance company through the affected person and others. The appellant acknowledges that some of the information in the records may be obtainable through the discovery process. However, she indicates that this process will not take place until the court has determined whether to certify the action as a class proceeding. The appellant surmises that there may be as many as 10,000 individuals included in the class of individuals being represented in this action. She argues that the requested information may assist the court in deciding whether to certify the class action.

The appellant states that due to the small amounts of money involved for each individual, it is unlikely that they will have any judicial remedy in the absence of a class proceeding. She submits that, as a result, there is a compelling public interest in disclosure of this material which clearly outweighs the privacy interests of the affected person.

In Order P-1121, Inquiry Officer Holly Big Canoe made the following observations about the application of the “public interest override” contained in section 23. In that case, records had also been exempted under section 21 of the Act. She stated:

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.

“Compelling” is defined in the Oxford dictionary as “rousing strong interest or attention”. In order to find that there is a compelling public interest in disclosure, the information at issue must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has available to effectively express opinion or to make political choices.

If a compelling public interest is established, it must then be balanced against the purpose of the exemption which has been found to apply. In my view, this balancing involves weighing the relationship of the information against the Act’s central purposes of shedding light on the operations of government and protecting the privacy of personal information held by government. Section 23 recognizes that each of the exemptions listed in the section, while serving to protect valid interests, must yield on occasion to the public interest in access to information held by government. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

I adopt the approach expressed in Order P-1121 for the purposes of this appeal. I have reviewed the information which I have found to qualify for exemption under section 21(3)(b). I find that the appellant's arguments are not sufficiently compelling to outweigh the purpose of this exemption. Moreover, I find, despite the nature of the class action suit, that the appellant's interest in the information is essentially a private one, that is, to assist her in pursuing the action against the insurance company and the affected person. Accordingly, I find that there is no compelling public interest in disclosure of the affected person's personal information, and section 23 of the Act is not applicable.

ORDER:

1. I order the OIC to disclose to the appellant the portions of Record 1 (which are attached to the copy of this order which is being sent to the OIC's Freedom of Information and Privacy Co-ordinator) by providing her with a copy of these pages on or before **August 27, 1997**.
2. I uphold the OIC's decision regarding the remaining records.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the OIC to provide me with a copy of the portions of Record 1 which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ August 6, 1997