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

ORDER P-1474

Appeal P_9700162

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 access to information about a named individual. The request indicated that this information was located in the records of another individual, a client of the Ministry (the parolee) and that the information sought was for the period between June 14, 1994 and August 9, 1994. The requester stated that she was acting on behalf of the named individual and enclosed an authorization from the parolee.

The Ministry responded by pointing out that while the request sought to access the personal information of the named individual, the requester had enclosed a consent from the parolee. The Ministry stated that it would require an authorization from the named individual.

In her reply, the requester set out a chronology of previous requests as attempts made to obtain the personal information of the named individual and explained that the information was being accessed in this manner because the "[named individual's] personal information is contained in the records of [the parolee]". The requester also provided an authorization from the named individual.

The Ministry granted partial access to the records. The Ministry denied access to the remaining records on the basis that some of information contained therein was exempt under section 49(b) of the Act (invasion of privacy) and that the remaining information was not responsive to the request.

The requester appealed the decision to deny access to records on the following grounds:

- her request included access to the personal information of the parolee
- the non-responsive parts of the records are responsive to the request
- more records responsive to the request exist
- the invasion of privacy exemption in section 49(b) does not apply.

During mediation of the appeal, the Ministry advised that the parolee had died. This office provided a Notice of Inquiry to the requester, now the appellant, and the Ministry. Representations were received from both parties.

DISCUSSION:

SCOPE OF THE REQUEST

In her submissions, the appellant states that the scope of the request also included the personal information of the parolee. The Ministry disagrees and states that this is the fourth request and appeal from the named individual and that the appellant did not ask to access the parolee's information but only that of the named individual.

I will, therefore, consider the wording of the request which states:

> Please consider this a Personal Request of Information of [the named individual]. The information is contained in the records of [the parolee]...

Section 24(2) of the Act provides that where a request does not sufficiently describe the record sought, the institution is obliged to inform the requester of any defect and assist in reformulating the request. The Ministry complied by asking the appellant to confirm whose personal information was being requested.

In her response, the appellant again stated:

> [t]he current request #970287 has been made directly by [the named individual] to the Ministry through his representative, for the specific period June 14, 1994 - August 9, 1994. [The named individual]'s personal information is contained in the records of [the parolee].

The appellant also indicated that the parolee had authorized the release of his personal information to the named individual. I note that the authorization from the parolee is qualified by the words "as outlined in [the named individual]'s request dated March 11, 1997."

I have reviewed the representations of the parties together with the evidence before me. I find that while the appellant makes frequent reference to the authorization of the parolee, the wording of the request and the underlying intent clearly is to obtain access to the personal information of the named individual. In my view, the Ministry has properly interpreted the request and the scope of the request is limited to the personal information of the named individual.

WHICH RECORDS ARE RESPONSIVE TO THE REQUEST?

The Ministry claims that portions of the records contain information that relates to other individuals and, therefore, is not responsive to the request. The appellant's position is that the request was for the personal information of both the named individual and the parolee and therefore, the portions of the records which the Ministry has determined to be non-responsive **are** responsive to the request.

In Order P-880, former Inquiry Officer Anita Fineberg considered the standard to be applied in deciding whether records are responsive to a request. She stated:

> In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise

> definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

I have previously considered the wording of the request and I concluded that the scope of the request is limited to the personal information of the named individual only. I have also reviewed the parts of the records that the Ministry has claimed are "non-responsive".

I find that these records contain information about the parolee and identifiable individuals, other than the named individual. I find that this information is not reasonably related to the request and therefore not responsive.

REASONABLENESS OF THE SEARCH

Where a requester provides sufficient detail about the records which she is seeking and the Ministry indicates that further records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the Ministry's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist. The appellant claims that additional records relating to the named individual should exist. In particular, the appellant points to a comment on page 9 of the parolee's Board of Parole Case File which refers to the named individual as "...a known drug dealer". The appellant's position is that records substantiating this comment should exist.

The Ministry states that there are two files for the parolee: the Ontario Board of Parole file which is in the custody and control of the Ministry's Freedom of Information (FOI) office and the Probation and Parole case file which is maintained by the Kitchener Probation and Parole Office.

The Ontario Board of Parole file contains all existing Ontario Board of Parole records relating to the parolee and to his conditional release on parole. The Ministry has included an affidavit from a member of the Ontario Board of Parole who confirms that there is only one Board of Parole file for the parolee and that, in response to an earlier appeal, the entire file was forwarded to the Ministry's FOI office. The Ministry states that in response to the request, all records containing the personal information of the named individual were retrieved from the file and identified as being responsive to the request.

The Ministry states that the Probation and Parole Case file contains case records relating to the community supervision of the parolee. The Ministry states that all records containing any personal information of the named individual were copied and sent to the Ministry's FOI office. The Ministry submits that this search was conducted by the Area Manager, an experienced employee who is very familiar with the contents of the probation and parole case files.

Having reviewed the Ministry's submissions, I am satisfied that the Ministry has made a reasonable search for records responsive to the request.

PERSONAL INFORMATION AND INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

In this appeal, the named individual is represented by the appellant and I will hereinafter refer to both the appellant and the named individual as the appellant.

I have reviewed the withheld portions of page 1 of the Probation and Parole Case File and pages 10, 16, 18 and 21 of the Board of Parole Case File. I note that page 1 of the Probation and Parole Case File and page 10 of the Board of Parole Case File are identical. Accordingly, I will only review page 10 for the purposes of this appeal and my finding will apply equally to both pages.

With respect to page 21, I note that all the information which relates to the appellant has already been disclosed by the Ministry. Therefore, I find that this page is no longer at issue and I will not consider it further.

I find that page 10 contains information which relates to the appellant and the parolee. Page 16 contains information which relates to the appellant, the parolee and other identifiable individuals. Page 18 contains information which relates primarily to the parolee with reference to the appellant and another identifiable individual. Therefore, the withheld information constitutes the personal information of these individuals.

Section 2(2) of the Act states that "[p]ersonal information does not include information about an individual who has been dead for more than thirty years." Because the parolee died on or about May 26, 1997, section 2(2) of the Act does not apply.

Where a record contains the personal information of both the appellant and another individual, section 49(b) allows the Ministry to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 21(3) 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 under section 23 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption.

The Ministry relies on section 21(2)(f) of the Act, which states:

> 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,
>
> > the personal information is highly sensitive.

The Ministry submits that the disclosure of the exempt information would reveal the personal concerns of the parolee. The Ministry submits that at the time that the request was processed, the parolee was hospitalized and was suffering from a terminal disease.

I have carefully reviewed the information in the records together with the representations of the parties. In my view, in considering the relevance of section 21(2)(f), I must determine whether disclosure of the personal information at issue would cause considerable personal distress to the individual to whom the information relates (Orders P-434 and P-597).

Having reviewed the record and the representations of the parties, I make the following findings:

(1) With respect to page 10, I find that the withheld information may properly be considered highly sensitive within the meaning of 21(2)(f). I find, therefore, that section 49(b) of the Act applies to this information.

(2) With respect to page 16, I find that the withheld information is not highly sensitive and section 21(2)(f) does not apply. I have reviewed the other factors under section 21(2) together with all the other relevant circumstances of this appeal. In my view, disclosure of this information, with the names removed, would not constitute an unjustified invasion of privacy. I have highlighted the parts of page 16 which should **not** be disclosed, on the copy of the page sent to the Ministry's Freedom of Information and Privacy Co-ordinator with this order.

(3) With respect to page 18, I find that the information relates to the parolee and section 21(2)(f) applies to it. In my view, in the current situation, severing under section 10(2) would not be reasonable as the appellant would only be left with his name. Therefore, the information which the Ministry has withheld is exempt from disclosure under section 49(b).

ORDER:

1. I find that the Ministry's search for records responsive to the request was reasonable and I dismiss this part of the appeal.

2. I uphold the Ministry's decision to deny access to the highlighted parts of page 16, as shown on the copy provided with this order to the Ministry's Freedom of Information and Privacy Co-ordinator.

3. I order the Ministry to disclose to the appellant the remaining or non-highlighted parts of page 16 by sending him a copy by **November 19, 1997**.

4. I uphold the Ministry's decision to deny access to the remaining portions of the record.

5. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the record disclosed to the appellant pursuant to Provision 3.

Original signed by: October 29, 1997
Mumtaz Jiwan
Inquiry Officer