



Information and Privacy
Commissioner/Ontario

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

ORDER P-1485

Appeal P_9700203

Office of the Public Guardian and Trustee



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NATURE OF THE APPEAL:

The Office of the Public Guardian and Trustee (the Public Trustee) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the identity of the person who filed a complaint against the requester. The complaint alleged that the requester was providing inadequate care for her physically and mentally ill husband. The Public Trustee located one responsive record and determined that the interests of a third party, the complainant, would be affected by the disclosure of the information which it contained. The Public Trustee notified the complainant pursuant to section 28 of the Act, and requested his or her representations with respect to the release of this person's identity.

The complainant objected to the release of his or her identity to the requester. The Public Trustee then denied access to the record containing the information responsive to the request, claiming the application of section 21(1) of the Act (invasion of privacy). The requester appealed the decision to deny access. A Notice of Inquiry was provided to the Public Trustee, the requester (now the appellant) and the complainant. Representations were received from all parties.

The information at issue in this appeal consists only of the name of the complainant, which is included in a one-page record entitled "Guardianship Investigation Request".

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, 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.

I have reviewed the record which contains the requested information to determine if it contains personal information and, if so, to whom the information relates.

The record contains the names, addresses and telephone numbers of the appellant's husband and other identifiable individuals, including the complainant. This information constitutes the personal information of each of these individuals. The record also reveals the fact that the complainant notified the Public Trustee in an effort to initiate an investigation into the quality of the care being provided to the appellant's husband. In my view, this particular information qualifies as the personal information of both the appellant's husband and the complainant.

The appellant is not mentioned by name in the record. In my view, however, it is implicit that the information relates to her since she is her husband's primary care-giver. Because her identity can be determined from the information in the record, I find that it also contains her personal information, within the meaning of section 2(1).

The Public Trustee claims that both of the invasion of privacy exemptions (sections 21(1) and 49(b) of the Act) apply to the personal information contained in the record. As I have found that the record includes the personal information of the appellant, the complainant and other individuals, I must consider whether it is exempt from disclosure under section 49(b), rather than section 21(1).

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 individuals and the Public Trustee determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Public Trustee has the discretion to deny the appellant access to that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of the 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 Public Trustee 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 Public Trustee submits that the disclosure of the personal information would unfairly expose the complainant to pecuniary or other harm (section 21(2)(e)); that the information is highly sensitive (section 21(2)(f)); and that it was supplied by the complainant in confidence (section 21(2)(h)).

These are all considerations favouring the non-disclosure of the personal information.

The Public Trustee submits that the personal information is highly sensitive as it concerns a complaint regarding allegations of mental illness and physical abuse of an individual. It also states that the individual who made the allegations may suffer some harm as a result of the appellant being advised of his or her name. In addition, it submits that upon learning the identity of the complainant, the appellant may commence a civil action against him or her, and thereby put this individual at risk of monetary loss. It also states that the information was provided in confidence by the complainant. By way of summary, the Public Trustee submits that the disclosure of the requested information would constitute an unjustified invasion of the personal privacy of the complainant and it should not, therefore, be released.

Similarly, the complainant indicates that the disclosure of his or her identity would result in an unjustified invasion of his or her privacy. The complainant relies on the following considerations in section 21(2):

- (1) unfair exposure to pecuniary or other harm;

- (2) the information in the record is highly sensitive, given the context of the complaint;
- (3) the complaint was filed with an expectation that it would be treated confidentially.

The complainant further submits that he or she had nothing to gain by making the complaint and only did so after much soul searching because he or she felt the welfare of the appellant's husband was at risk.

The appellant submits that she requires the disclosure of the identity of the complainant in order to bring closure to this incident. She states that she and her husband were wronged by the complainant, who intended to cause them grave damage. The appellant submits that privileged communication is a rare commodity and that the complainant knew the limits of confidentiality when making the allegation about the care of her husband. The appellant also states that, upon receiving the requested information, she does not intend to become destructive in the complainant's life.

I have reviewed the submissions of the parties and the information contained in the record and make the following findings:

- (1) The consideration in section 21(2)(e) is not applicable in the circumstances of this appeal. I find that the Public Trustee and the complainant have not provided any substantial basis for their assertion that the disclosure of the complainant's identity would expose him or her unfairly to pecuniary or other harm.
- (2) The identity of the complainant is highly sensitive within the meaning of section 21(2)(f), given that it is linked to allegations of inadequate care of a physically and mentally ill individual. This is a consideration which favours privacy protection.
- (3) The complainant and the Public Trustee have established that the personal information was supplied to the Public Trustee with a reasonably-held expectation of confidentiality, within the meaning of section 21(2)(h). In my view, this factor weighs heavily in favour of the protection of the complainant's privacy.
- (4) The appellant has not made any submissions concerning the applicability of any of the considerations listed in section 21(2), which favour the disclosure of the information. Neither have I been provided with sufficient evidence to substantiate any of the other, unlisted factors cited by the appellant which might, on balance, weigh in favour of the disclosure of the complainant's name to her.

Having considered all of the circumstances of this appeal and, balancing the appellant's right to access her personal information against the privacy interests of the complainant, I find that the disclosure of the complainant's identity would result in an unjustified invasion of his or her personal privacy. The information is, therefore, exempt under section 49(b) and should not be disclosed.

ORDER:

I uphold the Public Trustee's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ November 13, 1997