



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

ORDER P_1615

Appeal P_9800083

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 access to all records contained in a specified file maintained by the Office of the Children's Lawyer. The request did not include any records provided by the requester. The Ministry granted access to all responsive records with the exception of one page, on the basis that its disclosure would constitute an unjustified invasion of another individual's privacy (section 21(1) of the Act). The requester (now the appellant) appealed the decision to deny access.

The appellant is involved in a custody proceeding with his former spouse (the former spouse). The record at issue consists of a one-page letter from the lawyer for the former spouse, addressed to the Office of the Children's Lawyer.

This office provided a Notice of Inquiry to the appellant, the former spouse, her lawyer and the Ministry. Representations were received from the appellant and the Ministry.

DISCUSSION:

PERSONAL INFORMATION

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 record at issue. I find that it contains the personal information of the former spouse only.

INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

The appellant did not make direct submissions on the issues, but he has indirectly raised the application of the exception provided by section 21(1)(d) of the Act. With his representations, he has provided copies of various documents: a certified copy of an order of the Ontario Court of Justice confirming the appellant's rights of access to his child, a letter from the Ministry of Health Freedom of Information and Privacy Co-ordinator, the front page of the Intake Form used by the Office of the Children's Lawyer, and Orders P-1423 and P-1246 issued by the Commissioner.

Both Orders P-1423 and P-1246 addressed the application of the exception provided by section 21(1)(d) with respect to section 20(5) of the Children's Law Reform Act (the CLRA). Specifically, the issue was whether the appellant, as an access parent, was entitled to information about the health, education and welfare of his child, under provincial or federal legislation which expressly authorized such disclosure.

In Order P-1423, Adjudicator Laurel Cropley concurred with the findings made by Adjudicator Donald Hale in Order P-1246 where he found that:

Section 20(5) of the CLRA also grants an access parent the right to be given information “as to the health, education and welfare of the child”. As this provision is identical to that contained in section 16(5) of the Divorce Act, I find that the right to information which is contained in section 20(5) of the CLRA is also sufficiently specific to bring it within the exception contained in section 21(1)(d) of the Act.

It appears that the appellant is submitting that, based on the findings made in Orders P-1246 and P_1423, he should also have a right of access to the information in the record at issue. In both Orders P-1246 and P-1423, the record(s) contained the personal information of the child only. In the present case, I have found that the record contains the personal information of the former spouse. The record does not contain the personal information of the appellant’s child. Therefore, I find that the appellant does not have a right of access to the personal information of his former spouse and the exception in section 21(1)(d) does not apply. In my view, the only exception which may apply in the circumstances of this appeal, is section 21(1)(f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) provide guidance in determining whether disclosure of personal information would result in 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 against disclosure can be overcome is if 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 in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The Ministry submits that disclosure of the records would result in an unjustified invasion of privacy under sections 21(3)(c) and (f) of the Act. These sections state:

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

- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (f) describes an individual’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness.

The Ministry submits that the personal information in the record relates to eligibility for social services or welfare benefits (section 21(3)(c)) and describes the former spouse's finances, or financial history or activities (section 21(3)(f)).

As I have indicated previously, the appellant has not made direct representations on the exemptions claimed by the Ministry.

The record consists of a letter from the lawyer for the former spouse to the Office of the Children's Lawyer. Having reviewed the record and without describing it so as to reveal the information in the record, I can conclude that the information relates to the former spouse's eligibility for social services or welfare benefits. Accordingly, I find that the disclosure of this information would constitute an unjustified invasion of personal privacy under section 21(3)(c) of the Act. Section 21(4) does not apply to the information and the appellant has not raised the possible application of section 23 of the Act. I find therefore, that the record is exempt under section 21(1) of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Adjudicator

_____ September 28, 1998