



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1741

Appeal PA-990237-1

Ministry of the Solicitor General & Correctional Services



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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for his deceased father's (the deceased) complete personnel file for the period that he worked for the Ontario Provincial Police (the OPP). The request encompassed such documents as employee evaluations, incident reports, correspondence, medical reports and worker compensation claims.

The Ministry originally issued a decision claiming that the records fell within section 65(6) of the Act. Subsequently, the Ministry withdrew this claim and issued a revised decision granting access to some records. The Ministry denied access to pages 23, 31 - 35, 38, 41 - 43, and 45 - 70 of the record pursuant to section 21(1) (invasion of privacy) of the Act.

The appellant, appealed the Ministry's revised decision to deny access to the above-noted records.

During mediation, the appellant confirmed that, while his father is deceased, section 66(a) of the Act is not at issue as the request does not relate to the administration of his father's estate. The appellant also confirmed that section 2(2) is not at issue as his father has not been dead for more than 30 years.

Also during mediation, the appellant advised the mediator that he is not seeking access to pages 23, 31, 32, 35, 46, 48, 53, 56, 57, 58 of the record.

I sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties.

RECORDS:

As a result of mediation, the records remaining at issue are pages 33, 34, 38, 41 - 43, 45, 47, 49 - 52, 54, 55 and 59 - 70. These records consist of memoranda, notes to file, correspondence, medical documentation, handwritten notes and "workmen's" compensation information.

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 records were all obtained from the deceased's personnel file and consist of file notes, Workmen's Compensation Board claims, internal correspondence between OPP executive personnel and letters from medical practitioners spanning a period between May 1975 to June 1976. All of the records pertain directly to the deceased in the context of his medical disability claim and issues which arose with his employer in that matter. Accordingly, I find that the records all contain the personal information of the

deceased. Some of the records also contain information about other identifiable individuals. This information was collected and included in the records in the context of a review of the deceased's employment situation by the OPP. This information qualifies as the personal information of the individuals referred to in the records.

The records contain information which identifies a number of OPP staff and medical practitioners in the context of their professional responsibilities. Previous orders of this office have established that information provided by individuals in and as part of their professional capacities does not qualify as personal information (see Reconsideration Order R-980015 for a complete discussion on this issue). Therefore, I find that the records do not contain the personal information of these individuals.

The records do not contain the appellant's personal information.

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. In my view, section 21(1)(f) of the Act must be considered in the circumstances of this appeal. The appellant submits that the exception in section 21(1)(e) applies in this case. These sections provide:

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

- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(e)

Section 21(1)(e) requires that all three elements set out above be satisfied in order for it to apply.

The appellant states that:

In essence, research is what I require these records for; personal research into my father's career as a Provincial Constable with the Ontario Provincial Police ... I agree to abide by sections 21(1)(e)(ii) and (iii).

In Order P-666, former Assistant Commissioner Irwin Glasberg defined "research" as the systemic investigation into and study of materials, sources, etc., in order to establish facts and reach new conclusions, and as an endeavour to discover new or to collate old facts etc., by the scientific study or by a course of critical investigation.

I adopt this interpretation for the purpose of this appeal. In my view, the appellant has not established that the personal information being sought will be used for a research purpose as the term is defined above.

Even if I were to find that the activity described by the appellant above constitutes "research", he has not provided any evidence to establish that he has signed a research agreement with the Ministry as required by section 10(1) of Regulation 460 of the Act. This is necessary in order to meet the requirement of part (iii) of section 21(1)(e) and in its absence, I find that the exception provided by section 21(1)(e) does not apply.

Section 21(1)(f)

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the 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. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that 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 [Order M-1154; John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 (Div. Ct.)].

The Ministry submits that sections 21(2)(f), 21(3)(a) and (d) apply to the information at issue. These sections state:

(2) 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;
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
 - (d) relates to employment or educational history;

The appellant points out that his father has been dead for over 10 years and that he is the man's son who is simply seeking this information to learn more about his father. He cannot understand how any information about his long dead father could be "highly sensitive" after all these years. He states further that he is aware of his father's medical conditions and therefore, section 21(3)(a) should be inapplicable. Finally, he indicates that he has already received some of the information from his father's file such as attendance and grades at Police College and other job related training. In his view, it would appear that section 21(3)(d) could apply to this information and he does not understand how it could apply to some, and not to other information.

In making these arguments under sections 21(3)(a) and (d), the appellant is suggesting that withholding the information at issue would result in an "absurdity". Previous orders of this office have held that applying a presumption to personal information which was originally provided to an institution by an appellant, or of which the appellant is clearly aware would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure (see Orders M-444, M-613, M-847, M-1977 and P-1263, for example). These orders all determined that finding that a presumed unjustified invasion of privacy applied and denying access to information which the appellants provided to the institutions or of which they are clearly aware would, according to the rules of statutory interpretation, lead to an "absurd result".

These orders were decided in the context of a request made under Part III of the Act, which permits an individual to make a request for his or her own personal information. In this case, the request was made under Part II of the Act in that the appellant is seeking the personal information of another individual and none of the records contain his own personal information. However, because of his relationship to the deceased I have considered whether the principal underlying the application of the "absurd result" in previous orders should also apply in the circumstances of this appeal.

Section 21(3)(a)

Records 47, 52 and 63 contain correspondence from medical practitioners describing the deceased's medical condition and/or evaluation in sufficient terms to bring the information in these records within the presumption in section 21(3)(a). Although the appellant may well be aware of his father's medical

condition, he has not convinced me that he is aware of the particular contents of these records. Therefore, I find that the application of the presumption in section 21(3)(a) to these three records would not lead to an absurd result.

Section 21(3)(d)

All of the records at issue (including Records 47, 52 and 63) detail the issues pertaining to the deceased's employment with the OPP, specifically matters concerning the implications for his employment arising from his medical condition. The issues relating to the deceased's workmen's compensation claim and return to work with the OPP spanned a one year period and formed a significant part of the deceased's work-related association with the OPP. In my view, these records directly pertain to past events relating to the deceased's ability to perform the requirements of his job with the OPP, as viewed by himself, OPP executive staff and medical practitioners. As such, I find that they are an integral part of the deceased's past employment with the OPP and thus relate to his employment history. Therefore, I find that section 21(3)(d) applies to all of the records at issue and their disclosure would constitute a presumed unjustified invasion of privacy.

The fact that some information about the deceased may have been disclosed to the appellant does not necessarily mean that other information about him should not be exempt. The description of the information which the appellant said was disclosed to him is of a very different nature from that at issue in this appeal and I am satisfied that the information pertaining to the matter to which the records relate has been isolated from the rest. Therefore, there is no "absurdity" in finding that section 21(3)(d) applies to it.

I am sympathetic to the appellant's desire to know more about his father, however, as mentioned above the Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors or considerations set out in 21(2). In the circumstances of this appeal, the application of two presumptions has been established. Since none of the factors in section 21(4) are present, the exemption in section 21(1) applies, and it is not necessary for me to consider section 21(2).

ORDER:

I uphold the Ministry's decision.

Original signed by _____
Laurel Cropley

January 18, 2000

Adjudicator