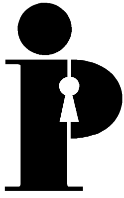
Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-1727

Appeal PA-990130-1

Health Professions Board

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NATURE OF APPEAL:

The appellant made a request to the Health Professions Board (the Board) seeking access to the contents of a specific complaint review file concerning a complaint he had made about a veterinarian (the veterinarian). The Board granted access to all material provided to the Board by the College of Veterinarians of Ontario (the College), with the exception of:

- Pages 'I' and 'J' and reference to those pages in the table of contents; and
- the names of "all other pet owners not parties to the complaint, and names of pets belonging to those owners" at page 18.

The appellant then made a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to pages I and J referred to above.

The Board denied access to these records on the basis of the exemptions at sections 14 (law enforcement) and 21 (personal privacy). In particular, the Board stated:

> ... [the Board] cites clauses 14(1)(d) and (g) in support of [its] decision to deny access, since the requested pages "I" and "J" ... were compiled using confidential sources, by an agency with a legislative mandate to regulate and enforce compliance with a law, for purposes of law enforcement. Further, the information in the record was collected by the [College] for internal college purposes and disclosed to [the Board] solely for the purposes of the [Board] review of the College decision with respect to your original complaint, on condition that it not be released to the parties to the review.
>
> In addition, subsection 21(1) of the Act places a mandatory exemption from access on personal information, except where access is sought by the individual to whom the information relates. The requested pages "I" and "J" contain sensitive information of both the veterinarian against whom you brought your complaint and other individuals who are not parties to either your complaint nor the [Board] review. Clauses 21(2)(f) (h) and (i) have been cited by the [Board] in support of this application of subsection 21(1). In addition, part of the requested record relates neither to your complaint nor to the [Board] review. Exemption from access of this part is, therefore, further supported by clause 21(2)(g), since it is unlikely to be reliable or accurate in the context of [this Board file].

(Between the time of the request and the time of the Board's decision, the Board was amalgamated with the Hospital Appeal Board to form a new agency called the Health Professions Review and Appeal Board, pursuant to the Ministry of Health Appeal and Review Boards Act, 1998. For the purposes of this appeal, I will consider the Board, as represented by the Health Professions Review and Appeal Board, to be the relevant institution).

The appellant appealed the Board's decision to this office.

I sent a Notice of Inquiry to the appellant and the Board setting out the issues in the appeal. I received representations from the Board only.

RECORD:

The record at issue in this appeal consists of a two page list. The first page contains a heading which reads "The following is a list that this particular member has had against him/her." Although the heading refers to a "particular member", the list actually contains information about other College members, in addition to the veterinarian. Each item consists of the name of a College member, followed by the name of a complainant and the outcome of the complaint. The outcome information consists either of a notation such as "discontinued" or "no decision", or a code such as "A" (meaning member referred to the discipline committee of the College), "B" (member met the professional standards of practice) or "C" (member did not meet the standards of practice). Finally, each item includes a College file location code and a notation as to whether the College's decision was appealed to the Board.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

The Board submits:

> All of the information in the record is the personal information of persons other than the appellant. Each of the eight entries on page "I" and five [sic] entries on page "J" consists of the name of a veterinarian against whom someone has brought a complaint to the [College], followed by the name of the complainant and a numerical reference to that complainant, as well as a code referring to the decision reached by the [College] in the complaint process, a notation as to whether the decision was appealed and, finally, another numerical reference identifying the location in the [College] of the file from which the information in the whole entry was retrieved.
>
> ... all of this information meets one or more of the definitions of "personal information" found in section 2 of the [Act], particularly clauses 2(1)(b), (c), and (h).

Paragraphs (b), (c) and (h) of the section 2(1) definition of "personal information" read:

> "personal information" means recorded information about an identifiable individual, including,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (h) 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 my view, the record contains the personal information of both the listed members and complainants. In the case of the members, disclosure of the record would reveal their names, together with the fact that a complaint has been made about that individual, as well as the outcome of the complaint and whether it was appealed to the Board. This is clearly information "about" the named members. In addition, I accept that the record reveals "an identifying number . . . assigned to the individual" as described in paragraph (c) of the section 2(1) definition of "personal information". Finally, the record contains the names of complainants; disclosure of these names in this context would reveal the fact that these individuals had made complaints about College members, and thus paragraph (h) of the section 2(1) definition of "personal information" applies. As a result, I find that the record in its entirety consists of personal information of the named individuals, both members and complainants.

INVASION OF PRIVACY

Introduction

Where a requester seeks personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits an institution from releasing this information.

In this situation, sections 21(2) and (3) 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 institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. 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 set out in 21(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

Section 21(1)(f)

It is clear that none of the exceptions to the section 21(1) exemption could apply in this case, except for section 21(1)(f) which reads:

> (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The Board submits that the section 21(3)(b) presumption of an unjustified invasion of personal privacy applies. That section reads:

> (3) 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;

The Board also submits that the factors at sections 21(2)(f), (g), (h) and (i) are applicable. Those sections read:

> (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;
> >
> > (g) the personal information is unlikely to be accurate or reliable;
> >
> > (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.

In the context of a request for information concerning allegations of professional misconduct against police officers, Assistant Commissioner Tom Mitchinson stated in Order M-1053:

> The Police and the affected persons submit that information relating to allegations of professional misconduct is highly sensitive. They support this position by pointing to the high stress levels experienced by many affected persons stemming from past prosecutions. The Police also refer to previous orders of this office where information relating to criminal history and allegations of improper professional conduct were found to be "highly sensitive". The Police also refer to Order P-1055 in which Inquiry Officer Mumtaz Jiwan found that information relating to allegations of improper professional conduct were "highly sensitive".
>
> The appellants argue that if the information was highly sensitive, the Police would not have posted the information publicly outside the hearing rooms.
>
> In order to qualify as "highly sensitive", the Police must establish that release of the information would cause excessive personal distress to the affected persons (Order P-434). It is clear that the records contain information relating to allegations of improper professional conduct against the affected parties. While I accept the appellant's position that the records were displayed publicly at a specific point in time, this does not mean that the information contained in the records is not highly sensitive. I accept that disclosure of allegations of professional misconduct would cause excessive personal stress to the officers involved, and that this information is properly characterized as highly sensitive (Orders P-658, P-1055, P-1117, P-1278 and P-1427).

Order M-1053 was upheld on judicial review in *Duncanson v. Toronto (Metropolitan) Police Services Board* (1999), 175 D.L.R. (4th) 340 (Ont. Div. Ct.).

In my view, the principles articulated by the Assistant Commissioner are applicable here. Disclosure of personal information in this record concerning allegations of professional misconduct, whether about the complainant or the member, is likely to cause excessive personal distress to those individuals affected persons, and thus is highly sensitive within the meaning of section 21(2)(f) of the Act.

The appellant made no submissions on the issues in this appeal. I have reviewed the factors weighing in favour of disclosure in section 21(2), and find that none is applicable based on the material before me. Since the only applicable factor is section 21(2)(f), which weighs against disclosure, I find that disclosure of the record would constitute an unjustified invasion of the personal privacy of the individual members and complainants named in the record. As a result, it is not necessary for me to consider the application of the section 21(3)(b) presumption against disclosure.

Severance

Where a record contains exempt information, section 10(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information. In Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner) (1997), 102 O.A.C. 71, the Divisional Court stated:

I would note, however, that while the Commissioner has taken an excessively aggressive approach with respect to s. 10(2), the Ministry's position that 49 of the 50 documents were subject to Cabinet privilege and that s. 10(2) has no application whatsoever to the records at issue plainly went too far. The Act requires the institution head to disclose what can be severed and it is contemplated that the severance exercise will be conducted by those most familiar with the records. Had the Ministry made an effort to disclose what is severable, it is possible that the request could have been dealt with much more efficiently and much more expeditiously. While the Commissioner's order is, in my view, patently unreasonable, it should not go unmentioned that the situation before this Court was to some extent produced by the unreasonably hard line taken by the Ministry in its response.

In my view, it would not be appropriate to this Court's function on judicial review to engage in a detailed record-by-record review of what should and should not be disclosed. That task should be left to the Commissioner in light of the legal principles enunciated here. Accordingly, I will say no more about precisely what, if anything, must be disclosed from the records at issue here.

I would, however, adopt as a helpful guide to the interpretation of s. 10(2) the following passage from the judgment of Jerome A.C.J. in Canada (Information Commissioner) v. Canada (Solicitor General), [1988] 3 F.C. 551 at 558 interpreting the analogous provision in the Access to Information Act, S.C. 1980-81-82-83, c. 111, sch. I, s. 25:

> One of the considerations which influences me is that these statutes do not, in my view, mandate a surgical process whereby disconnected phrases which do not, by themselves, contain exempt information are picked out of otherwise exempt material and released. There are two problems with this kind of procedure. First, the resulting document may be meaningless or misleading as the information it contains is taken totally out of context. Second, even if not technically exempt, the remaining information may provide clues to the content of the deleted portions. Especially when dealing with personal information, in my opinion, it is preferable to delete an entire passage in order to protect the privacy of the individual rather than disclosing certain non-exempt portions or words.
>
> Indeed, Parliament seems to have intended that severance of exempt and non-exempt portions be attempted only when the result is a reasonable fulfilment of the purposes of these statutes. Section 25 of the Access to Information Act, which provides for severance, reads:
>
>> Notwithstanding any other provision of this Act, where a request is made to a government institution for access to a

> > record that the head of an institution is authorized to refuse to disclose under this Act by reason of information or other material contained in the record, the head of the institution shall disclose any part of the record that does not contain, and can reasonably be severed from any part that contains any such information or material. [Emphasis added]
>
> Disconnected snippets of releasable information taken from otherwise exempt passages are not, in my view, reasonably severable.

Similarly, in Montana Band of Indians v. Canada (Minister of Indian & Northern Affairs) (1988), 51 D.L.R. (4th) 306 at 320, Jerome A.C.J. stated:

> To attempt to comply with s. 25 would result in the release of an entirely blacked-out document with, at most, two or three lines showing. Without the context of the rest of the statement, such information would be worthless. The effort such severance would require on the part of the department is not proportionate to the quality of access it would provide.

I adopt these principles for the purpose of this appeal. It is arguable that some of the information contained in the records is not, taken in isolation, exempt under section 21. However, in my view, the record cannot reasonably be severed, since to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Further, in the circumstances, to the extent that some of this information might be useful, it could reasonably be used to ascertain the content of the withheld passages, in particular the identities of the individual members or complainants. This disclosure would undermine the purpose of the section 21 personal privacy exemption. As a result, I uphold the Board's decision not to sever information from the record for the purpose of disclosing it to the appellant.

LAW ENFORCEMENT

Because of my finding that the record is exempt in its entirety, it is not necessary for me to consider the application of the section 14 law enforcement exemption to the record.

I uphold the Board's decision to withhold the record in its entirety.

Original signed by: November 15, 1999
David Goodis
Senior Adjudicator