



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1773

Appeal PA-990304-1

Office of the Public Guardian and Trustee



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant made a request to the Office of the Public Guardian and Trustee (the OPGT) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to all documents “passed between” the OPGT and a named individual relating to the appellant’s mother’s estate.

The OPGT had been appointed as litigation guardian to the appellant’s brother to protect his interests in the estate.

The OPGT granted access to some records and denied access to others under sections 19, 21, 49(a) and 49(b) of the Act.

The appellant appealed the OPGT’s decision.

At mediation, the appellant confirmed that he is not seeking access to the information which was severed from Records 182, 209 and 212 and these records, therefore, are no longer at issue in this appeal.

I initially sent a Notice of Inquiry to the OPGT. The non-confidential portions of the OPGT’s representations were shared with the appellant when the Notice of Inquiry was sent to him. Representations were submitted by the appellant.

RECORDS:

The records at issue in this appeal consist of a statement of account (Records 2-7) and a two page letter from litigation counsel at the OPGT to the named individual (Records 12 and 13).

DISCUSSION:

Invasion of Privacy

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

The OPGT submits that the records contain financial information attributed to the appellant’s brother, and consist of correspondence sent to the estate trustee by litigation counsel acting on behalf of the appellant’s brother that is implicitly of a private or confidential nature. The OPGT’s position is that the records contain the personal information of the appellant’s brother, on behalf of whom the OPGT acts as litigation guardian.

Having reviewed the records, I find that they contain information which is primarily about the appellant’s brother, but also about the appellant.

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 institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

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 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 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].

The OPGT submits that disclosure of the records would constitute an unjustified invasion of the personal privacy of the appellant's brother, as the personal information relates to financial information referenced in section 21(3)(f), which reads:

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

- (6) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

Records 2-7 are an account for legal services rendered on behalf of the appellant's brother. Records 12 and 13 comprise a letter in which financial information which relates to the appellant's brother is discussed, and an estimate is given of the total of his legal costs to be stated in a forthcoming account.

Although the records contain financial information relating to the appellant's brother, the information does not contain the type of details listed in section 21(3)(f), but only relates to his interest in his mother's estate. Accordingly, I find that section 21(3)(f) does not apply.

However, the records are confidential communications sent on behalf of the appellant's brother by someone representing his legal interests, and relate to financial matters. In my view, the information contained in these records is highly sensitive in these circumstances (section 21(2)(f)).

The appellant submits that the OPGT has waged a vendetta against him for standing up for his rights. He believes that the OPGT has colluded with the individual to whom the correspondence was sent to disinherit him.

I have reviewed the records and the representations, and balanced the competing interests of access to information and protection of privacy. In the circumstances of this appeal, I find that the considerations favouring privacy protection are not outweighed by the appellant's allegations of wrongdoing. Accordingly, I am satisfied that disclosure of the records at issue would constitute an unjustified invasion of the appellant's brother's personal privacy, and section 49(b) applies.

ORDER:

I uphold the OPGT's decision.

Original signed by: _____
Holly Big Canoe
Adjudicator

_____ April 6, 2000