



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1756

Appeal PA-990163-1

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Community and Social Services (the Ministry). The request was for access to all records concerning the appellant and "located at Central Services Adoption Unit (or elsewhere) in regard to false abuse allegations which were initiated in 1997." The appellant indicated that the scope of his request did not include information on the adoption itself, since he already had those records.

The Ministry identified 74 pages of records which were responsive to the request and denied access to them on the basis of sections 21 and 49(b) (invasion of privacy) of the Act.

The appellant appealed the Ministry's decision to deny access to the records. During the mediation of the appeal, the Ministry granted the appellant access to pages 30, 36, 52, 56 and 60. The remaining pages, comprised of correspondence, transcripts, interoffice memoranda, referral forms and facsimile coverpages, remain at issue.

This office provided a Notice of Inquiry to the Ministry, the appellant and to two other individuals whose rights may be affected by the outcome of this appeal (the affected persons). Representations were received from the Ministry, the appellant and one of the affected persons. At the Inquiry stage of the appeal, the appellant provided me with a consent executed by his wife authorizing the disclosure to the appellant of her personal information which may be contained in the records.

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 records at issue deal generally with certain allegations made against the appellant and were compiled by the Ministry in the course of its determination as to the appropriateness of an adoption application by the appellant and his wife. They include the original allegations received by the Ministry, various contacts between the Ministry and the appellant, his wife, the affected persons and the social worker who performed a home study in support of the appellant's adoption application. The records also contain a number of e-mails and more formal memoranda and correspondence between Ministry staff and adoption and child welfare officials in British Columbia.

With two exceptions, I find that because the records relate to the adoption application by the appellant and his wife and certain allegations against him, each of the records contain the personal information of the appellant. Record 14 is an e-mail between Ministry staff regarding arrangements for a telephone conference call between Ministry staff and an official with the British Columbia adoption office. This record does not

contain personal information because the individuals referred to in the e-mail are acting in their professional capacities as employees of the adoption branch of the Ministry and their British Columbia equivalents. Record 61 is a FAX cover page containing the address, telephone numbers (home and office) and FAX number of one of the affected persons. Accordingly, I find that Record 61 contains only the personal information of this individual.

UNJUSTIFIED INVASION OF PERSONAL PRIVACY

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 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 section 21(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767]. It found that a section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the Act or if a finding is made under section 23 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 23 exemption.

In this case, the only exception to the section 21(1) exemption which could apply is section 21(1)(f).

The Ministry takes the position that some of the personal information contained in Records 1-4, 12-13, 16-17, 22-23, 27-28, 38-43, 45-50, 54 and 58 falls within the presumption in section 21(3)(a) (medical, psychiatric or psychological history). I note, however, that the medical information referred to in Records 22-23 and 27-28 relates only to the appellant. I find that since this information is "about" the appellant only, its disclosure cannot constitute an unjustified invasion of another individual's personal privacy (Order M-1141).

The Ministry also argues that Records 1-4, 12-13, 22-23, 24-26, 27-28, 37, 38-43, 45-50, 54 and 58 contain information which falls within the presumption in section 21(3)(g) (personal recommendations or
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evaluations). Again, I note that the personal information referred to in Records 22-23, 27-28 and 37 relates only to the appellant, however.

Finally, the Ministry submits that Records 31-35, 38-43, 45-50, 54 and 58 contain information which is subject to the presumption in section 21(3)(b) (compiled as part of an investigation into a possible violation of law). However, neither the Ministry or the affected person resisting disclosure has made any submissions in support of this position beyond a simple assertion that the presumption applies. In addition, there is nothing in the records themselves to indicate that they were compiled as part of a law enforcement investigation. In the absence of any evidence that the information in these records was compiled as part of an investigation into a possible violation of law, I find that the presumption does not apply to it.

The Ministry has claimed the application of the presumptions in sections 21(3)(a) and (g) to the personal information contained in the records which relates to individuals other than the appellant. I will address them in my discussion of the individual records below. These sections state:

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;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or

The Ministry has also cited the factors in sections 21(2)(e), (f), (h) and (i) to support its position that the exception in section 21(1)(f) does not apply.

The appellant relies on the consideration listed in section 21(2)(d) as a factor favouring the disclosure of the information contained in the records.

The affected party who made submissions is adamant that the information which he/she provided to the Ministry not be disclosed to the appellant. While not specifically referring to the considerations listed in section 21(2), this individual appears to rely on the factors listed in sections 21(2) (e), (f), (h) and (i).

These provisions read:

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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (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.

I will now review the application of the presumptions under section 21(3) and the considerations under section 21(2) to each of the records at issue.

Records 1-4 (duplicated at Records 66-69), 12-13 (duplicated at Records 70-71), 24, 25-26 (duplicated at Records 72-73) and 62-65

With respect to the application of the presumption in section 21(3)(a), I find that portions of Records 1-4, 12-13, 24, 25-26 and 62-65 contain personal information which relate to the medical, psychological or psychiatric history of other identifiable individuals. As such, this information, which does not relate to the appellant, falls within the presumption in section 21(3)(a).

The Ministry submits that Records 1-4, 12-13, 24, 25-26 and 62-65 contain information which may be characterized as personal recommendations, or evaluations as contemplated by section 21(3)(g) because they relate to the views of the affected person about the suitability of the appellant to be an adoptive parent. In Order P-447, Adjudicator Holly Big Canoe made the following comments with respect to the application of the presumption in section 21(3)(g):

In my opinion, the terms “personal evaluations” or “personnel evaluations” refer to assessments made according to measurable standards. The records contain opinions, comments and observations provided by the primary and secondary affected persons during the course of an investigation of an allegation of sexual harassment and, in my view, do not consist of personal or personnel evaluations. Accordingly, I find that the presumption of unjustified invasion of personal privacy contained in section 21(3)(g) does not apply.

I adopt the approach taken by Adjudicator Big Canoe for the purposes of this appeal. In my view, the comments contained in these records cannot reasonably be characterized as “assessments made according to measurable standards”. Rather, they represent the opinions of the affected person as to the appellant’s suitability to be an adoptive parent. Accordingly, I find that these records do not consist of personal or personnel evaluations made according to measurable standards, within the meaning of the presumption in section 21(3)(g).

Each of these records consists of correspondence from one of the affected persons to the Ministry. These are the records containing the allegations which gave rise to the Ministry's queries into the suitability of the appellant to be an adoptive parent. The records are clearly marked as confidential and not to be disclosed to the appellant and contain highly sensitive information about several other identifiable individuals, including allegations against the appellant relating to his fitness to be an adoptive parent. As noted above, the affected person who provided this information to the Ministry did so strictly in confidence. I find that this information is highly sensitive within the meaning of section 21(2)(f) and was provided with an expectation of confidentiality, as contemplated by section 21(2)(h). I give a great deal of weight to these factors in light of the nature of the information which is contained in Records 1-4 (duplicated at Records 66-69), 12-13 (duplicated at Records 70-71), 24, 25-26 (duplicated at Records 72-73) and 62-65.

I am not, however, persuaded that the disclosure of the information contained in these records would **unfairly** damage the reputation of any person referred to therein, within the meaning of section 21(2)(i). The author of these records provided the Ministry with the information voluntarily and was under no compulsion to do so. In addition, disclosure to the appellant would not result in damage to any individual's reputation which could properly be characterized as "unfair". I find, therefore, that the consideration listed in section 21(2)(i) has no application to the records in this appeal.

For similar reasons, I cannot agree that disclosure of the records would result in any individual being exposed **unfairly** to pecuniary or other harm under section 21(2)(e). I find that I have not been provided with sufficient evidence to substantiate that this consequence is reasonably likely to flow from disclosure of the records.

The appellant raises the question of fairness in his submissions. In his view, he has been the subject of unwarranted accusations about his ability to be an adoptive parent and points out that, ultimately, the adoption proceeded following the Ministry's inquiries. The appellant feels that fairness dictates that when allegations are made against a person, they ought to be entitled to enough information to properly defend themselves.

In Order PO-1750, Adjudicator Laurel Cropley commented with respect to the disclosure of personal information which was supplied to an institution by a third party where the information concerns the individual who is requesting it. She held that:

However, in the circumstances of this appeal, the fact that the information is actually about the appellant is a relevant consideration. In this regard, I find that there is an inherent fairness issue in circumstances where one individual provides detailed personal information about another individual to a government body. In my view, this goes to the autonomy of the individual and his ability to control the dissemination and use of his own personal information, and is reflected in section 1(b) of the Act as one of the fundamental purposes of the Act. This section states:

The purposes of this Act are,

- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

In my view, this conclusion is also applicable to the present appeal. I find this to be a significant factor favouring the disclosure of these records, though it is not among the listed considerations in section 21(2). I give this factor a great deal of weight when balancing the appellant's right of access to this information against the privacy protection of other identifiable individuals.

The appellant also refers to the fact that the personal information contained in these records is relevant to a fair determination of his rights, within the meaning of section 21(2)(d). In Order PO-1710, Senior Adjudicator David Goodis addressed a similar situation involving a request for certain parole records following the conclusion of the Parole Board's hearing. He found that:

With respect to the appellant's submission regarding section 21(2)(d), I am unable to conclude based on the material before me that this information is relevant to a fair determination of rights affecting the appellant. The Board hearing has been completed, and the appellant has not provided any evidence of a pending or contemplated proceeding in which rights affecting the appellant may be determined (Order MO-1179). Therefore, section 21(2)(d) does not apply here.

In the present circumstances, the adoption application which is discussed in the records was successfully completed by the appellant and his wife. I have not been advised of any other proceeding where the information contained in these records may be of assistance to the appellant. I find that I have not been provided with sufficient information to demonstrate that the information contained in the records is relevant to a fair determination of the appellant's rights in this or some other forum. Accordingly, I do not attach any significant weight to the consideration in section 21(2)(d).

Balancing the factors favouring the protection of privacy in section 21(2) against the considerations favouring access, I find that the factors favouring the non-disclosure of these records are more compelling. The information was provided to the Ministry by the affected person with a clearly-stated expectation of confidentiality and makes reference to a number of highly sensitive facts relating to the affected person, the appellant and to other identifiable individuals. Because of the nature of the personal information in these records, particularly that which relates to other identifiable individuals, I must find that the considerations favouring privacy protection outweigh those which favour the appellant's right of access to them.

Accordingly, I find that the disclosure of Records 1-4 (duplicated at Records 66-69), 12-13 (duplicated at Records 70-71), 24, 25-26 (duplicated at Records 72-73) and 62-65 would constitute an unjustified invasion of the personal privacy of the affected person and other identifiable individuals. As a result, I find that these records are exempt from disclosure under section 49(b) of the Act.

I will address the application of section 49(b) to the remaining records bearing in mind the findings which I have made above respecting the nature of the information contained in the records and my finding that its disclosure to the appellant would constitute an unjustified invasion of personal privacy.

Records 5-6 (duplicated at Records 20-21), 22, 23 and 27-28

These records are letters written by the appellant's family doctor "to whom it may concern" at the request of the appellant. These letters contain only the personal information of the appellant and his wife. Mention is made in Record 5-6 of certain stressors in the appellant's life relative to his first marriage, but this reference relates only to the appellant and his wife, not to any other identifiable individuals. As the information contained in each of these records relates only to the appellant and his wife (who has consented to their disclosure to him), I find that the disclosure of these records would not constitute an unjustified invasion of another individual's personal privacy. Records 5-6, (20-21), 22, 23 and 27-28 are not, accordingly, exempt under section 49(b).

Record 7-11

This record represents a transcript of the oral reasons given by a judge of the Supreme Court of British Columbia in a proceeding involving the appellant and his former wife. Clearly, the appellant is aware of the outcome of this proceeding as he was represented by counsel. In my view, it would not constitute an unjustified invasion to disclose the reasons for judgment in a proceeding in which the appellant was a party. Accordingly, I find that this record is not exempt under section 49(b).

Record 14

I have found above that this record does not contain any personal information. As such, it cannot be exempt from disclosure under sections 21(1) or 49(b). As the information in this document is not subject to any other mandatory exemption, it should be disclosed to the appellant.

Record 15

Record 15 is a letter from the Ministry to the federal Human Resources and Development Canada National Adoption Desk requesting that the adoption application submitted by the appellant and his wife be put on hold. As this record contains only the personal information of the appellant and his wife, its disclosure would not constitute an unjustified invasion of personal privacy under section 49(b) and I will order that it be disclosed to the appellant.

Records 16 and 17

These documents consist of a handwritten letter and a referral form which outline in some detail the allegations made against the appellant, including the identity of the individual(s) who brought them to the
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attention of the Ministry. They contain personal information relating to the psychological treatment and evaluation of an identifiable individual within the meaning of section 21(3)(a). The letter is marked "Confidential" and contains information which is highly sensitive. I find that the disclosure of the information contained in these records would constitute an unjustified invasion of the personal privacy of one of the affected persons and other identifiable individuals. Accordingly, it is exempt from disclosure under section 49(b).

Records 18 and 19

Record 18 is a letter from the social worker assigned to evaluate the suitability of the appellant and his wife to become adoptive parents to the Ministry to which are attached Records 19 (a consent form executed by the appellant and his wife) and Records 20-21, 22 and 23 (which are addressed above). As the letter contains only the personal information of the appellant and his wife, I find that their disclosure would not constitute an unjustified invasion of personal privacy and they are not exempt under section 49(b).

Record 29

This record is a one-page facsimile cover page from the social worker to a Ministry official. Again, it contains only the personal information of the appellant or information which was supplied by the appellant to the social worker. As such, I find that its disclosure would not constitute an unjustified invasion of personal privacy and the record is not exempt under section 49(b).

Record 31-32

Record 31-32 is a letter from the Ministry to the Adoption Section of the British Columbia Ministry for Children and Families. It contains specific information about the allegations made against the appellant, including their source. The information set out in this letter is highly sensitive within the meaning of section 21(2)(f). I find that its disclosure would result in an unjustified invasion of the personal privacy of one of the affected persons and other identifiable individuals. It is, therefore, exempt from disclosure under section 49(b).

Records 33-34, 35 and 37

Record 33-34 is a two-page e-mail from one Ministry staff person to another. The majority of the record relates the contents of several telephone conversations between the staff person and the appellant and his wife. Information on page 4, however, contains details about the nature and source of the allegations against the appellant. I find that this information is highly sensitive and its disclosure would reveal information which had been received from one of the affected persons in confidence. I have attached to this order a copy of Record 33-34 in which I have highlighted those portions which are exempt from disclosure under section 49(b). I will order that the remaining portions of this record which are not highlighted be disclosed.

Record 35 is also an e-mail from one Ministry staff person to another regarding the Ministry's inquiries into the allegations from one of the affected persons. Again, I have highlighted those portions of this record which I find to be highly sensitive and, therefore, exempt from disclosure under section 49(b).

Record 37 is a one-page e-mail relating the substance of a telephone conversation between the appellant's wife and the Ministry staff person who composed the e-mail. I find that the disclosure of this information would not constitute an unjustified invasion of personal privacy and the record should be disclosed.

Records 38-41, 42-43, 45-46, 47, 48, 49, 50 and 53-55

These records are e-mails between Ministry staff involved in evaluating the impact which the allegations made against the appellant should have on his pending adoption application. These documents describe in detail the efforts which they made to investigate the veracity of the allegations and properly determine the suitability of the appellant and his wife to be adoptive parents. As such, they contain the allegations and much of the background information addressed in my discussion of Records 1-4, 12-13, 24, 25-26 and 62-65, where it was found to be highly sensitive and provided in confidence.

Records 38-43, 45-50 and 54 also contain information relating to the psychological history and treatment of the appellant. However, I find that this information is so intertwined with that of other identifiable individuals as to render it impossible to distinguish or sever. In addition, Record 45 contains the psychological history of another identifiable individual and its disclosure is presumed to constitute an unjustified invasion of personal privacy under section 21(3)(a). In my view, the disclosure of each of these records would result in the release to the appellant of the same highly sensitive information which was received in confidence from one of the affected persons and is addressed in Records 1-4, 12-13, 24, 25-26 and 62-65. Accordingly, I find that the disclosure of this information would constitute an unjustified invasion of personal privacy and that they are properly exempt under section 49(b).

Record 44

This document is a letter from the British Columbia Ministry for Children and Families to the Ontario Ministry of Community and Social Services' Adoption Central Services advising that it has no record of any child protection investigations involving the appellant. As this information relates only to the appellant, its disclosure would not result in an unjustified invasion of personal privacy under section 49(b).

Record 51

This document is an e-mail from one Ministry staff person to another advising that a letter addressed to the appellant and his wife is now ready to be sent. Its disclosure would not constitute an unjustified invasion and this record will be ordered released to the appellant.

Records 57-59

This three-page e-mail from one Ministry staff person to another sets out the contents of several telephone conversations between the staff person and the appellant, the appellant's wife, the social worker and an official with the British Columbia adoption office. I find that the disclosure of the majority of the record would not constitute an unjustified invasion as the information relates only to the appellant or records what the appellant himself was told. I do not agree with the position taken by the Ministry that Record 58 contains information which falls within the presumption in section 21(3)(a). The information does not relate to any medical, psychological or psychiatric history, evaluation, condition, treatment or diagnosis of an individual.

The bottom paragraph of Record 58, which I have highlighted on the copy provided to the Ministry with a copy of this order, refers specifically to the allegations made by one of the affected persons, which I have found above were made in confidence and are highly sensitive. I find that the highlighted portions of Record 58 are exempt from disclosure under section 49(b).

Record 61

This is a one-page facsimile page containing the address, home and office telephone numbers and FAX number of one of the affected persons. Record 61 does not contain any personal information of the appellant. I have not been provided with any submissions as to why the disclosure of this information would not result in an unjustified invasion of the affected person's personal privacy. Accordingly, I find that it is exempt under section 21(1).

Record 74

Record 74 is a one-page letter from a Ministry official to one of the affected persons. It contains information about the nature of the allegations made against the appellant and the steps taken by the Ministry to confirm its veracity. I have found above that this information is highly sensitive and was provided in confidence to the Ministry. In my view, the disclosure of this information would constitute an unjustified invasion of personal privacy and the document is, therefore, exempt under section 49(b).

I also find that section 21(4) does not apply to any of the records which I have found to be exempt and the appellant has not raised the possible application of section 23 of the Act. In summary, I find that Record 61 is exempt from disclosure under section 21(1). Records 1-4 (66-69), 12-13 (70-71), 16, 17, 24, 25-26 (72-73), 31-32, 38-41, 42-43, 45-46, 47, 48, 49, 50, 53-55, 62-65 and 74, along with the highlighted portions of Records 33-34, 35 and 57-59 are exempt from disclosure under section 49(b). Records 5-6 (20-21), 7-11, 14, 15, 18, 19, 22, 23, 27-28, 29, 37, 44 and 51, as well as those portions of Records 33-34, 35 and 57-59 which are not highlighted are not exempt under either section and will be ordered disclosed.

ORDER:

1. I uphold the Ministry's decision to deny access to Records 1-4 (66-69), 12-13 (70-71), 16, 17, 24, 25-26 (72-73), 31-32, 38-41, 42-43, 45-46, 47, 48, 49, 50, 53-55, 61, 62-65 and 74, along with the highlighted portions of Records 33-34, 35 and 57-59 under sections 21(1) and 49(b) of the Act.
2. I order the Ministry to provide the appellant with copies of Records 5-6 (20-21), 7-11, 14, 15, 18, 19, 22, 23, 27-28, 29, 37, 44 and 51, as well as those portions of Records 33-34, 35 and 57-59 which are not highlighted by March 21, 2000 but not before March 16, 2000.
3. In order to verify compliance with Provision 2 of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Donald Hale
Adjudicator

_____ February 16, 2000