



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2026

Appeal PA-010429-1

Ministry of Correctional Services



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:

This is an appeal from a decision of the Ministry of Correctional Services (the Ministry, now the Ministry of Public Safety and Security), under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

As background, the requester (now the appellant) was the victim of an assault by another individual (the affected party). The affected party was convicted of the offence of assault causing bodily harm, and received a suspended sentence. The appellant then started a civil action against the affected party in Toronto Small Claims Court, seeking damages for assault. However, he was unable to serve his claim as he did not have a current address for the affected party. The appellant accordingly made a request to the Ministry for the address of the affected party, referring to a named probation officer at a specified location of the Ministry.

The Ministry located a one-page record, which contained the information sought. In its decision, the Ministry denied access to the record, relying on the mandatory exemption under section 21(1) of the *Act* (unjustified invasion of personal privacy), with reference to the factors in sections 21(2)(e) (exposure to pecuniary or other harm), 21(2)(f) (highly sensitive) and 21(2)(g) (unlikely to be accurate or reliable).

The appellant appealed the decision of the Ministry. In his letter of appeal, he has raised the applicability of section 21(2)(d) of the *Act* (fair determination of rights), as well as section 23 (public interest in disclosure). During mediation through this office, the possible application of section 49(b) was also raised, since it appears that the record may also bear information about the appellant. Also during mediation, the affected party was contacted to determine whether he objected to the release of his address. The affected party has objected to disclosure of this information.

I sent the Notice of Inquiry to the Ministry, initially, inviting its representations on the facts and issues raised by the appeal. Its representations were shared with the appellant, with the exception of certain portions which were withheld for confidentiality reasons. The appellant has also submitted representations in this appeal.

RECORD:

The record at issue is a one-page document, which contains, among other things, the address of the affected party. The appellant seeks only this address.

DISCUSSION:

PERSONAL INFORMATION

In order to assess whether sections 21(1) and/or 49(b) apply, it is necessary to determine whether the records contain personal information, and to whom that personal information relates.

Under section 2(1) of the *Act*, "personal information" is defined as 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.

I find that the record contains personal information of the affected party, in that it sets out his home address. There is also some personal information of the appellant.

INVASION OF PRIVACY

Under section 49(b), where a record contains the personal information of both a requester and of another individual and the institution determines that the disclosure of the information would constitute an unjustified invasion of the other individual's personal privacy, the institution has the discretion to deny the requester access to the information in the record.

Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of personal privacy. 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.

In its representations, the Ministry has referred to the criteria described in sections 21(2)(e) and (f).

The appellant submits in general that although the disclosure of the address is an invasion of privacy, it is not an unjustified invasion and is in the general public interest. The appellant relies on section 21(2)(d) of the *Act*.

Section 21(2)(e) – pecuniary harm

Section 21(2)(e) provides:

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,

the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

The Ministry submits that disclosure of the information at issue will expose the affected party unfairly to pecuniary harm.

The appellant contends that if there are monetary consequences, these will be determined by the courts by way of a public and fair trial. Therefore, if the affected party is held responsible for damages, it cannot be unfair.

I agree with the appellant. I find that section 21(2)(e) is not applicable in that it cannot be concluded that any exposure to pecuniary harm which the affected party may face will be unfair: see Orders M-746 and MO-1453.

Section 21(2)(f) – highly sensitive

Section 21(2)(f) provides:

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,

the personal information is highly sensitive;

The Ministry submits that the exempted information is highly sensitive and its release to a third party would cause personal distress to persons or the family of those named in the record.

The appellant disputes that this factor applies.

I am satisfied that this is a relevant factor. For information to be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause excessive personal distress to the subject individual (Orders M-1053, P-1681, PO-1736). This factor has been found to apply, for example, to a request for the names of police officers charged with professional misconduct (Order M-1053), in circumstances involving the identity of an individual with respect to a specific birth registration (Order P-1681), and to a request for the names and addresses of deceased persons and names of possible inheritors (Order PO-1736).

Assistant Commissioner Mitchinson in Order P-1618 found that the personal information of “complainants, witnesses or suspects” in their contacts with the police is highly sensitive.

In Order MO-1436, to which I directed the parties’ attention in this appeal, former Adjudicator Dawn Maruno found that disclosure of the name and address of a person alleged to have assaulted the requester could reasonably be expected to cause excessive personal distress to the individual. Further, she found the factor in section 14(2)(f) to be a compelling factor weighing heavily against disclosure.

I agree with the reasoning in Order MO-1436 on this factor, and I am satisfied that it also applies in the circumstances of this case. Taking into consideration the nature of the incident between the appellant and the affected party (a personal assault), the likelihood that the disclosure of the affected party’s address will lead to further contact between the parties, and the affected party’s objections to the release of this information, I am satisfied that disclosure of this information could reasonably be expected to cause excessive personal distress to the affected party. I accord this factor substantial weight in my assessment of whether disclosure would constitute an unjustified invasion of personal privacy.

Section 21(2)(d) – fair determination of rights

Section 21(2)(d) provides:

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,

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

The appellant submits that section 21(2)(d) is a highly relevant factor. He states that he has a legal right to be compensated for his injuries by the affected party. He states that he requires dental work arising out of those injuries, which he cannot afford. He has initiated proceedings, but is unable to continue without the affected party's address. The action has been brought in Small Claims Court which, unlike the superior courts, does not have power to issue an order compelling the Ministry to disclose the address to him during the course of a proceeding.

In this case, the appellant submits, he was assaulted. There is no doubt about this since the affected party pleaded guilty in criminal court. He has the full right to receive remedies for his injuries. The appellant states that he is requesting the address only for the purpose of serving the claim by registered mail, and will not disclose this information to any third party. He submits that the Ontario Court of Justice has recognized his rights by disclosing the affected party's (old) address on the copy of the verdict. However, since the affected party has changed his address, the new address is no longer with the court records but only with his probation officer.

The appellant relies on Order M-1146, in which Adjudicator Laurel Cropley ordered the disclosure of the same type of information.

The Ministry submits that section 21(2)(d) is a relevant consideration only with respect to the name of the affected party. The privacy interests in this circumstance would outweigh the release of further personal information.

In Order P-312, Assistant Commissioner Tom Mitchinson developed the test for the application of section 21(2)(d), stating:

In my view, in order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as apposed to a non-legal right based solely on moral or ethical grounds; and

- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

I am satisfied that the appellant meets the requirements set above for the application of section 21(2)(d). His action is based on the tort of assault, a cause of action well established in the common law. I am satisfied that he has commenced the action, and is unable to pursue it until he is able to obtain the address of the affected party. To this extent, his ability to obtain that information is significant to the determination of his rights, and is required in order to prepare for that proceeding.

I find that section 21(2)(d) is a relevant and substantial factor weighing in favour of disclosure.

Unlisted factors

Orders M-1146 and MO-1436, both of which contain similar facts to the ones before me, considered whether the availability of alternative methods for obtaining the address of the affected party was a relevant, unlisted, factor in assessing whether to order disclosure. In Order MO-1146, Adjudicator Cropley found that the fact that the appellant may be able to obtain this information by using the court processes, but was unlikely to be able to do so through other means, was a relevant but not highly substantial factor weighing against disclosure. In Order MO-1436, former Adjudicator Maruno was satisfied that the appellant would be able to use the civil court process to obtain the affected person's name and address, and found this to be an unlisted factor against disclosure, bearing moderate weight.

In the case before me, I cannot conclude that the appellant would be able to obtain the information he seeks through the civil court process. The analysis of that process in those prior decisions focused on the Rules of Civil Procedure under the *Courts of Justice Act*, and it is not apparent that the mechanisms available under those Rules for obtaining this information would be available under the rules of Small Claims Court.

I therefore find this consideration of little assistance in this case.

In Order M-1146, Adjudicator Cropley also discussed the particular privacy concerns raised by potential disclosure of personal addresses, as follows:

I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the *Act* is to protect the privacy of individuals with

respect to personal information about themselves held by institutions (section 1(b)).

In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn, may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. This potential result of disclosure, in my view, weighs heavily in favour of privacy protection under the *Act*.

This is not to say that this kind of information should never be disclosed under the *Act*. However, before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.

I agree with the analysis above, and take it into account in my consideration of these issues.

It should be noted that in Order M-1146, Adjudicator Cropley ordered the disclosure of the address of the affected party, while in Order MO-1436, former Adjudicator Maruno refused to order disclosure of similar information. No two cases have identical facts, and each must be decided on its own merits. I am satisfied, however, that the facts in this appeal are more akin to those in Order MO-1436 than to those in Order M-1146, which involved an incident in which a dog allegedly bit the appellant.

Conclusion

I find that sections 21(2)(d) and (f) of the *Act* are both relevant in the circumstances of this case, and that while one points strongly in favour of disclosure, the other points strongly against disclosure.

In a sense, the facts before me present a stark choice between the values of openness and privacy, both of which are central to the *Act*. In arriving at my conclusions, I have been guided by both of these values in considering whether to order disclosure of the information at issue, and have considered the extent to which each is furthered by either the disclosure or non-disclosure of the information. On the value of openness expressed in the *Act*, it has been said that the

overarching purpose of access to information legislation...is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry....Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive and accountable.

[*Dagg v. Canada (Minister of Finance)* (1997), 148 D.L.R. (4th) 385 at 403, per La Forest J. (dissenting on other grounds)].

The disclosure of the information at issue in this case, the address of the affected party, has a somewhat indirect connection to the exercise of democratic rights described above. On the other hand, as I have indicated, the prospect of the disclosure of an individual's address, over his objections, brings to the forefront the fundamental purpose under the Act of the protection of personal privacy.

Having regard to the factors under section 21(2) identified, and the more general considerations discussed above, I am satisfied that it has been established that the disclosure of the affected party's address would constitute an unjustified invasion of his personal privacy.

I am also satisfied that the Ministry has exercised its discretion under section 49(b) appropriately in refusing access to the information.

PUBLIC INTEREST

Under section 23 of the *Act*, an exemption from disclosure under section 21 (among others) does not apply where a "compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption." For section 23 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)].

In Order P-984, Adjudicator Holly Big Canoe discussed the first requirement referred to above:

"Compelling" is defined as "arousing strong interest or attention" (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act's* central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

The appellant submits that this case raises matters of a public interest in that the affected party has been convicted of a crime. It is in the general public interest not only that offenders be punished, but also that the victims get some justice. The appellant is the victim of a crime, and the government has a duty to prevent crimes in the future. If disclosure of the address is refused, and the appellant is unable to seek compensation from the affected party, this would be a "green light" for all prospective criminals to do what they want, and have the government shield them from monetary responsibility for their injuries.

I find that the circumstances of this case raise interests that are more private in nature, than public. Essentially, the appellant seeks justice through the civil courts for a wrong done to him by another individual. I agree that there is a general public interest in the prosecution of offenders through the criminal justice system, but this is not what this appeal is about. The appeal arises out of the appellant's wish to have a determination of rights as between himself and the affected party, which is essentially a private matter.

I thus conclude that section 23 does not apply in the circumstances of this case.

I am not without sympathy for the predicament of the appellant. I have considered his arguments carefully and find some merit in them. The prospect that he will be unable to pursue, or face tremendous difficulties in pursuing a civil claim, is troubling. I have weighed this against the privacy interests of the affected party, considering both sides of the issue in light of the values expressed by the *Act* as a whole. I am satisfied that in this case, the balance is in favour of non-disclosure.

ORDER:

I uphold the decision of the Ministry to deny access to the information in issue.

Original signed by:
Sherry Liang
Adjudicator

June 26, 2002