



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

# **ORDER PO-2918**

**Appeal PA09-346**

**Ministry of Community Safety and Correctional Services**



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## **NATURE OF THE APPEAL:**

The appellant submitted a multiple part request to the Ministry of Community Safety and Correctional Services (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The part of the request relevant to this appeal sought access to:

...a copy of any single *recent* record in the Coroner's Investigation Files where the cause of death was determined to be drug related. The record chosen must contain a toxicology report, as indeed it surely must if the cause of death is determined to be drug related. I wish all identifying personal data to be severed.

The Ministry randomly selected a responsive record and denied access to it, citing the mandatory exemption in section 21(1) (invasion of privacy), with reference to the consideration in section 21(2)(f) and the presumption in 21(3)(a).

During mediation, the appellant confirmed that he is only appealing the decision to withhold portions of the specified Coroner's Investigation report. On review, the record provided to this Office for the appeal, did not appear to be responsive to the request, as the deceased individual named in the record had been murdered. The Ministry obtained another random record where the cause of death was determined to be drug related. The Ministry issued a revised decision in which parts of the report were disclosed, but portions were again withheld under section 21(1) with reference to sections 21(2)(f) and 21(3)(a). The appellant confirmed that he is appealing the Ministry's revised decision.

As the appeal was not resolved at mediation, the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. During the inquiry into the appeal, I sought and received representations from the Ministry and the appellant. Representations were shared in accordance with Section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

## **RECORDS:**

The record at issue is the withheld portions of a toxicology report.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine whether the exemption found in section 21 applies to the record at issue, it is necessary; to first determine whether the record contains "personal information" "within the meaning of the *Act*. If it is determined that the record does not contain personal information, then section 21 cannot be relied upon to withhold the information.

Personal information is defined in section 2(1) of the *Act*, in part, as "recorded information about an identifiable individual".

Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Ministry submits that the record contains the personal information of the deceased individual including their name, the results of the toxicology analysis and the opinion of the toxicologist as to whether the results reached in the report caused or contributed to the death of the deceased individual.

I note that the Ministry has also withheld the names, titles, phone number and email address of the coroner, pathologist and the forensic toxicologist. I assume that this information may have been withheld because the Ministry believes that this information, in combination with other information in the record, may identify the deceased individual. However, the Ministry does not make such an argument nor do the Ministry’s representations address why this information was withheld under section 21(1). Accordingly, I find that this information is not “personal information” for the purposes of the *Act* since it is professional or official information about the coroner, pathologist and forensic toxicologist. As it is not personal information, it cannot be exempt under section 21(1). As no other exemptions have been claimed for this information, I conclude that it should be disclosed to the appellant.

The appellant argues that by severing the name and personal identifiers of the individual, the record is no longer information about an identifiable individual. The appellant states:

I could have a person’s entire genome sequence, surely the ultimate manifestation of “personal information”, and it would not help me identify that person one jot.

The appellant then makes reference to the analysis by Adjudicator Donald Hale in Order P-1389 and, later, in Order PO-1880 in support of his position. Adjudicator Hale, in considering whether information relating to the total billing amounts for the ten highest billing general practitioners in Metropolitan Toronto was about “identifiable individuals”, stated:

The Ministry further submits that there is a strong possibility that there exists some external information in the public domain or in the general practitioner community which could be linked to the information at issue to make a connection between a particular billing amount in the record and the practitioner associated with that billing.

...

In my view, the Ministry’s arguments rely on the unproven possibility that there **may** exist a belief or knowledge of the type described. I have not been provided with any substantive evidence that information exists outside the Ministry which could be used to connect the dollar amounts to specific doctors. The scenario described by the Ministry is, in my view, too hypothetical and remote to persuade me that individual practitioners could actually be identified from the dollar amounts contained in the record. I find, therefore, that the information at issue is not about an identifiable individual and does not, therefore, meet the definition of “personal information” contained in section 2(1) of the *Act* [original emphasis].

In response, the Ministry argues that the advent of the internet means that there is a greater likelihood of an individual being identified even by a so-called anonymous record. The Ministry states:

Certain drug-related deaths receive significant media exposure, or exposure through on-line social media web sites. Added to this is the fact that there are relatively few individuals who die in Ontario of certain drug deaths. This means that disclosing toxicology reports even when the name of the individual is still removed can still conceivably be used to identify that individual, and the possibility of linking the individual who died of the drug to the toxicology report has become more likely with the Internet.

Further, the Ministry argues that the order referred to in Order PO-1880 is out of date with current technology. The Ministry states:

..[The Ministry believes] this 1997 order can be distinguished on the basis that it is 13 years old, and largely predates the phenomenon of the Internet, with its vast data networks that are impossible for the Ministry to know about in their entirety, that have contributed to the significant erosion of personal privacy, and that must be taken into consideration for this type of access request in 2010. Further, the 1997 order relates to doctors billing information, which is not nearly as sensitive as the type of personal information that is found in a toxicology report.

The Ministry also argues that it would go against the purposes of the *Act* to disclose “highly sensitive personal information about a single individual when the name of the individual associated with that personal information is removed.”

Based on my review of the records and the representations of the parties, I find that with the personal identifiers removed, the information in the record does not qualify as personal information as defined in section 2(1) of the *Act* because it does not relate to an identifiable individual, as required by the definition of that term.

The appellant requested a single recent toxicology report where the cause of death is drug-related. Based on my review, once the name of the individual is removed as well as the file numbers and date of the report, the information remaining at issue consists of the results of the testing, generalized explanatory notes of the testing undertaken and a description of the items tested and cannot reasonably be said to relate to an identifiable individual.

I do not accept the Ministry’s argument that the number of drug-related deaths or the exposure of drug-related deaths in the media, combined with the on-line social media web sites, renders this particular toxicology report recorded information about an identifiable individual. I find the Ministry’s argument lacks the evidence necessary for me to find that the information at issue, minus the personal identifiers, is about an identifiable individual.

Further, despite the Ministry’s arguments to the contrary, the reasoning by Adjudicator Donald Hale in Order P-1389 is instructive in the present appeal. Adjudicator Hale’s finding stands for the proposition that the institution, in claiming that a record contains personal information, must provide some evidence of information that exists outside the institution that can be used to connect the information with a particular individual.

In the present appeal, the Ministry argues that the “Internet with its vast data networks that are impossible for the Ministry to know about in their entirety” would make the information at issue identifiable to a particular individual. The Ministry does not provide an example of how this could occur or even the “data networks” that could be used to achieve this end. As such, the Ministry’s submission is both speculative and vague. I find that the Ministry has not identified a plausible scenario in which the record at issue, with the personal identifiers removed, could be linked to a particular individual. I have not been provided with any substantive evidence that information exists outside the Ministry which could be used to connect the toxicology report with a particular individual. Accordingly, I find that the information at issue is not about an identifiable individual and that it does not, accordingly qualify as “personal information” under the definition of that term in section 2(1) of the *Act*.

As I have determined that the information at issue does not fall within the definition of “personal information”, the Ministry is not able to withhold it under section 21(1) of the *Act*, which can only apply to personal information. Further, as no other exemptions were claimed for this information and no other mandatory exemptions apply to it, I will order that it be disclosed to the appellant, following the severing of all personal identifiers.

**ORDER:**

1. I order the Ministry to disclose the record to the appellant by providing him with a copy of the record by **November 15, 2010**. For reference, I have provided the Ministry with a highlighted copy of the record identifying the information to be withheld. To be clear, the information highlighted should **not** be disclosed to the appellant.
2. In order to verify compliance with the above provision, I reserve the right to require the Ministry to provide me with a copy of the record sent to the appellant.

Original Signed By: \_\_\_\_\_ October 14, 2010  
Stephanie Haly  
Adjudicator