

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3370

Appeal PA13-431

Ministry of Community Safety and Correctional Services

July 25, 2014

Summary: The ministry received three requests for access to records relating to the ministry's reaction to an incident where an identified individual, who is an elected public official, attended at a provincial jail. The ministry refused to confirm or deny the existence of responsive records, claiming that they fall within the ambit of section 21(5). In this order, the adjudicator finds that the records do not contain the personal information of the elected official, although they do contain personal information relating to another identifiable individual. Because the vast majority of the information in the records cannot qualify for exemption under section 21(1), section 21(5) cannot apply to it. He orders the ministry to issue a new decision letter respecting the responsive records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1) [*definition of 'personal information'*], 21(5).

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received three requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

I am seeking all materials, including emails, memorandums, reports, etc... from the MCSCS that were written between March 25 and March 28 that

concern an incident involving [an identified individual] at the Toronto West Detention Centre.

I am seeking all materials, including emails, memorandums, reports, etc... from the office of [a named assistant deputy minister] in the MCSCS responsible for adult institutions concerning an incident at the Toronto West Detention Centre involving [the same identified individual] in March, 2013.

I am seeking all materials, including emails, memorandums, reports, etc..., written by [named MCSCS manager] concerning an incident at the Toronto West Detention Centre [the TWDC] involving [the same identified individual] in March, 2013.

[2] In its decision, the ministry responded to all three requests and advised that the existence of the requested records cannot be confirmed or denied in accordance with the personal privacy exemption in section 21(5) of the *Act*.

[3] The requester, now the appellant, appealed the decision. Mediation was not successful in resolving the appeal and the file was moved to the adjudication stage of the appeals process. I sought the representations of the ministry and the identified individual initially, and received them from the ministry only.

[4] In this order, I find that the information in the records relating to the individual identified in the request is not subject to section 21(5) as it does not qualify as "personal information". Accordingly, I will order the ministry to issue a decision letter with respect to that information, as well as other information that qualifies as personal information relating to another identifiable individual.

RECORDS:

[5] The records that are responsive to the first request consist of 64 pages of email communications passing between ministry staff that relate to the incident where the identified individual attended at the Toronto West Detention Centre in March 2013.

[6] The records that are responsive to the second request consist of 17 pages of emails.

[7] The sole record responsive to the third request is a one-page Information Report dated March 25, 2013.

ISSUES:

- A: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B: Has the institution properly applied section 21(5) of the *Act* in the circumstances of this appeal?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[8] In order to determine which sections of the *Act* may apply, it is necessary to decide whether any responsive records, if they exist, would contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (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,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that

correspondence that would reveal the contents of the original correspondence,

- (g) the views or opinions of another individual about the individual, and
- (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;

[9] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

[10] Section 2(2.1) also relates to the definition of personal information. This section states:

(2.1) 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.

[11] 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.¹

[12] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.² To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³

[13] The ministry argues that if records exist, they would contain information that would qualify as personal information about the primary affected person because any such information would reveal something of a personal nature about this individual. However, the ministry recognizes that, if records do exist that are responsive to the request, they may be about the identified individual in his or her official capacity, as this person is an elected public figure. It relies on the decision in Order MO-2931 which

¹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

² Orders P-1409, R-980015, PO-2225 and MO-2344.

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

found at page 14 that regardless, “public figures are still entitled to privacy with respect to their personal matters.”

[14] As noted above, the primary affected person did not submit representations in response to the Notice of Inquiry provided to him.

Findings

[15] Based on the nature of the request, I find that any responsive records would contain information about the named individual. As noted above, this individual is a very prominent elected political figure. However, I find that his actions in the events that might be described in responsive records are not of a personal nature, nor would they reveal anything of a personal nature about this individual. Rather, the records responsive to the request, if they exist, refer exclusively to this individual in his official capacity as an elected official. Any actions that might be described in any responsive records would address this individual’s activity in an official, rather than in a private, or personal, capacity. Accordingly, because the records, if they exist, would not reveal anything of a personal nature about this individual, I find that they do not contain information that qualifies as his personal information for the purposes of the definition of that term in section 2(1).

[16] As a result of this finding, I conclude that the disclosure of any responsive information relating to the identified individual would not result in an unjustified invasion of the individual’s personal privacy under section 21(1). Because the information cannot qualify for exemption under section 21(1), section 21(5) can have no application to any of the information in the responsive records that relates to the individual named in the request. However, the records also appear to contain the personal information of another identified individual, who was an inmate in the MWDC on the date referred to in the request. Clearly, this information qualifies as the personal information of this individual under paragraphs (b) and (h) of the definition in section 2(1).

[17] Consequently, I confirm that there are responsive records and will order the ministry to issue a decision letter respecting access to all of the responsive records, using the date of this order as the date of the request. To summarize, I find that the ministry is unable to rely on the application of section 21(5) in this appeal and I will order it to provide the appellant with a decision letter respecting access to the responsive records.

ORDER:

1. I do not uphold the ministry’s decision to apply section 21(5) to the responsive records at issue in this appeal.

2. I order the ministry to provide the appellant with a decision respecting access to the responsive records, treating the date of this order as the date of the request.

Original Signed By: _____
Donald Hale
Adjudicator

July 25, 2014 _____