

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3414

Appeal PA13-466

Ministry of Health and Long-Term Care

October 24, 2014

Summary: The ministry received a request under the *Freedom of Information and Protection of Privacy Act* for access to a forensic audit report relating to a specified clinic. The ministry issued a decision granting partial access to the audit report, relying on the mandatory personal privacy exemption in section 21(1) to withhold various portions of it. The appellant appealed the ministry's decision. The ministry's decision to partially disclose the audit report is upheld, with the exception of three severances which the ministry is ordered to withhold under section 21(1).

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" and section 21(1).

OVERVIEW:

[1] The Ministry of Health and Long-Term Care (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the forensic audit report relating to a specified nurse practitioner led clinic and its director (the report). The requester also asked for access to any other reports, memos, directions or other documents relating to any complaints about or investigations into the director or the clinic by the ministry or the Ministry of Finance. The ministry located one record that was responsive to the request; a 31-page report. As required under section 28 of the *Act*, the ministry notified an individual whose interests could be

affected by disclosure of the record (the appellant) and sought the appellant's views on disclosure. The appellant provided submissions to the ministry objecting to disclosure of any part of the report.

[2] The ministry subsequently issued a decision granting partial access to the report. The ministry withheld portions of the report on the basis that they were exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*. The appellant appealed the ministry's decision to this office. A second related appeal, PA14-40, was filed by the requester who appealed the ministry's decision to withhold portions of the report under section 21(1). Mediation was attempted in both appeals but did not resolve the issues and the two appeals were moved to the adjudication stage of the appeal process for a written inquiry under the *Act*.

[3] At the beginning of my inquiry into appeal PA14-40, I sought and received the representations of the ministry on the withheld information in the report and provided a copy of these to the requester. After reviewing the ministry's representations, the requester accepted the ministry's position and withdrew that appeal. As a result, I closed appeal PA14-40.

[4] The only remaining issue before me is whether the information in the report that the ministry has decided to disclose is exempt under section 21(1) as argued by the appellant. Because the appellant objects to disclosure of the information in the report that the ministry has decided to disclose, I invited his representations on the issues below. The appellant did not submit representations. I also notified other individuals whose interests could be affected by disclosure of the record (the affected parties) and invited their representations. The affected parties also did not submit representations. Due to the mandatory nature of the section 21(1) exemption, I found it unnecessary to seek any further representations.

[5] In this appeal, I rely on the materials before me to determine whether section 21(1) applies to the portions of the report that the ministry decided to disclose. In addition to the report itself, these materials include the ministry's representations from appeal PA14-40 explaining its reasons for claiming section 21(1) to withhold other portions of the report, and the submissions the appellant provided to the ministry at the time of the request.

[6] In this order, I uphold the decision of the ministry with the exception of three additional severances that I find are exempt.

RECORDS:

[7] The sole record at issue consists of the portions of a 31-page audit report that the ministry has decided to disclose.

DISCUSSION:

A. Does the information in the report which the ministry has decided to disclose contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[8] To determine whether the mandatory personal privacy exemption in section 21(1) of the *Act* applies, I must decide whether the record contains “personal information” and, if so, to whom it relates. The term personal information is defined in section 2(1) of the *Act* as recorded information about an identifiable individual. Paragraphs (a) through (h) of the definition include a number of examples of personal information, including:

- (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,
...
- (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.¹ Section 2(3) also relates to the definition of personal information and states:

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.

[10] 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.² 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.³ To qualify as personal

¹ Order 11.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[11] In its representations for appeal PA14-40, the ministry explains that the purpose of the report at issue was to investigate and evaluate the conduct of certain employees and officers of the clinic. It continues that while the names of and information about these individuals appear in a professional or employment context, the report describes what these individuals did or did not do in that professional context. The ministry states that the withheld information suggesting that these individuals were involved in the misappropriation of funds or inappropriate hiring practices is personal information about these individuals because it reflects on their personality and personal ethics. It adds that it severed the titles of employment where they stand alone in the report because the individuals in any of the positions would be identifiable by anyone familiar with the clinic and its staff.

[12] Having reviewed the portions of the report that the ministry has decided to disclose, I find that three personal pronouns that appear in pages 15 and 16, constitute the personal information of an identifiable individual. While the ministry has withheld all other personal pronouns related to various identifiable individuals that appear in the report, it appears to have overlooked these three. I find that the ministry's representations above apply to these three personal pronouns as disclosure of the pronouns would reveal something of a personal nature about an identifiable individual. Specifically, I find that disclosure of the pronouns would reveal the conduct of an identifiable individual who was investigated, along with certain actions of this same individual during the investigation. On this basis, I find that these three pronouns qualify as the personal information of the identifiable individual. Aside from these three personal pronouns, I find that the remaining portions that the ministry has decided to disclose do not contain the personal information of any identifiable individual.

B. Does the mandatory exemption at section 21(1) apply to the three personal pronouns that qualify as personal information?

[13] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. The section 21(1)(a) to (e) exceptions are relatively straightforward. I find that the personal pronouns do not fit within any of paragraphs (a) to (e) of section 21(1), and I further find that none of these exceptions apply in this appeal.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[14] The section 21(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 21. Under section 21(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[15] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy. If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the “public interest override” at section 23 applies.⁵ I find that none of the presumptions apply to the personal pronouns at issue. I further find that none of paragraphs (a) to (d) of section 21(4) apply in this appeal. Accordingly, I am left to consider the factors in section 21(2), which if any apply, and what effect they have.

[16] I find that the factor in section 21(2)(f) (highly sensitive) is the only one that is applicable in the circumstances of this appeal. In the submissions the appellant provided to the ministry during the request stage, the appellant relied on this factor explaining that disclosure of information in the report would cause the identifiable individuals significant personal distress in addition to that experienced as a result of participating in the forensic investigation and being associated with the clinic. I find that the highly sensitive factor applies in this appeal and weighs in favour of not disclosing the personal pronouns at issue. Having found that the only factor applicable in this appeal, section 21(2)(f), weighs in favour of withholding the personal pronouns at issue, I find that they are exempt under section 21(1) because their disclosure would result in an unjustified invasion of an identifiable individual’s personal privacy. I will therefore order the ministry to withhold these pronouns when it discloses the remaining report.

ORDER:

1. I order the ministry to withhold three personal pronouns appearing in pages 15 and 16 of the report that I have found to be exempt under section 21(1). For clarity, I attach a copy of these pages with the three pronouns to be withheld highlighted.

⁵ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

2. I uphold the ministry's decision to disclose the remaining information in the report, which I have found does not contain personal information and I order it to disclose the report to the original requester by **December 1, 2014, but not before, November 26, 2014.**

Original signed by: _____
Stella Ball
Adjudicator

_____ October 24, 2014