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

ORDER P-1403

Appeal 9700026

Ministry of Community and Social Services

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NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all reports relating to the requester's son. The son resides with his mother who is the custodial parent. The Ministry identified the responsive records and granted partial access. Following clarification with the requester, the Ministry disclosed additional records to him. Access was denied to the remaining records pursuant to section 21(1) of the Act (invasion of privacy). The requester appealed the decision.

During mediation, the requester, now the appellant, identified the specific records which he was seeking. The Ministry indicated that some of these records did not exist. The appellant accepted the Ministry's position and stated that he was satisfied that the Ministry had identified all responsive records.

This office provided a Notice of Inquiry to the appellant, his former wife (the mother) and the Ministry. Because the records may contain the personal information of the appellant, the Notice of Inquiry invited the parties to comment on the application of section 49(b) of the Act. Representations were received from all parties.

In its representations, the Ministry indicated that it had released two records previously withheld in full to the appellant. The records that now remain at issue consist of the severed portions of a consultation note and seven treatment plans.

PRELIMINARY MATTER:

In his representations, the appellant has raised the application of section 11(1) of the Act, which reads as follows:

> Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Section 11 of the Act is a mandatory provision which requires the head of an institution to disclose records in certain circumstances. The duties and responsibilities set out in section 11 of the Act belong to the head alone. The Information and Privacy Commissioner or his delegate do not have the power to make an order pursuant to section 11 of the Act. Therefore, I am unable to consider this section in this order.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined in part, to mean recorded information about an identifiable individual. I have reviewed the records and I find that the consultation note contains the personal information of the appellant, the mother, the son and other identifiable individuals. The treatment plans contain the personal information of the mother and the son only. The treatment plans do not contain the personal information of the appellant.

INVASION OF 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 the personal information of both the appellant and other identifiable individuals and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the appellant access to that information. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy.

Where, however, a record only contains the personal information of other individuals, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. In this appeal, I have determined that the treatment plans contain the personal information of the mother and son and do not contain any information relating to the appellant. I will therefore make my finding on these records under section 21(1) of the Act. I have also determined that the consultation note contains the personal information of both the appellant and other identifiable individuals and my finding on this record will be made under section 49(b) of the Act.

The appellant has raised the application of the exception in section 21(1)(b), which states as follows:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
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> > in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates.

The appellant submits that disclosure of the information at issue is critical to the son's "environment, health and safety". While I appreciate the appellant's concern for his son, it is my view that this is not the type of fact situation contemplated by this section of the Act. I find that the circumstances of this appeal do not satisfy the requirements of the "compelling

circumstances affecting the health or safety of an individual" and section 21(1)(b) does not apply.

In my view, the only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy under both sections 21(1) and 49(b). Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2), as well as all other considerations which are relevant in the circumstances of the appeal.

The Ministry relies on sections 21(3)(a) and 21(2)(f) of the Act to withhold access to the records.

The appellant has raised consideration of the factors listed in sections 21(2)(b), (d), (g), (h) and (i).

I will first consider the application of section 21(3)(a), which reads as follows:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

Having reviewed the information at issue, I find that both the consultation note and the treatment plans relate to medical, psychiatric or psychological history, diagnosis, treatment or evaluation and fall within the presumption in section 21(3)(a). With respect to the consultation note which I have previously found contains the personal information of the appellant, I find that these pieces of the record are too interwoven with the personal information of other identifiable individuals and it is not possible to sever this information.

With respect to the section 21(2) factors raised by the appellant, I note that of these, sections 21(2)(g), (h) and (i) favour protection of the personal information. However, even if I were to find that the considerations under section 21(2) raised by the appellant were relevant and compelling, the Divisional Court's decision in the case of John Doe v. Ontario (Information and Privacy Commissioner (1993) 13 O.R. 767 held that considerations under section 21(2) cannot be used to rebut the presumptions in section 21(3). Accordingly, the considerations raised by the appellant cannot be used to rebut the presumption in section 21(3)(a). I find that none of the circumstances in section 21(4) are present in this case and the appellant has not raised section 23.

Therefore, I find that the consultation note qualifies for exemption under section 21(1) and section 49(b) applies. I find also that the treatment plans are exempt from disclosure under section 21(1) of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: June 9, 1997
Mumtaz Jiwan