



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

ORDER 46

Appeal 880142

Ministry of the Solicitor General



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O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) or a request for access to personal information under subsection 48(1) a right to appeal any decision of a head under the Act to the Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On March 24, 1988, a request was made for various records from the Ministry of the Solicitor General (the "institution"). The nature of the requested records can be summarized as follows:
 - (a) Staff personnel complaint form completed by Individual A on March 29, 1987;
 - (b) Handwritten statement by Individual A outlining complaints respecting the requester;
 - (c) Statements made by Individual B on March 29, 1987 alleging disruptions of the neighbourhood by the requester;
 - (d) Staff personnel complaint form completed by Individuals B and C on October 15, 1987.
2. The institution had previously received a request from the appellant's spouse for information similar to that being

sought by the appellant. The spouse's request involved more records than the appellant's. The institution apparently concluded that it should broaden the scope of the appellant's request to include records that were part of her spouse's request, but not included in her request.

3. Having determined that some of these records contained personal information relating to other individuals, the Freedom of Information Co_ordinator (the "Co_ordinator") for the institution wrote to these affected persons on April 22, 1988 seeking their views on possible disclosure. The requester was advised, accordingly.
4. On May 16, 1988, the Co_ordinator advised the requester by letter that partial access was granted to some, but not all, records. The institution cited sections 14, 21 and 49 of the Act as the basis for this decision since "...the release of these documents would constitute a breach of confidentiality and an unjustified invasion of privacy".
5. On May 18, 1988, the requester appealed the decision of the institution, and I gave notice of the appeal to the institution, the appellant and to the affected persons named in the request.
6. The records at issue were obtained from the institution and reviewed by an Appeals Officer from my staff. As a settlement could not be effected, on August 9, 1988, I gave notice to all parties and affected persons that I was conducting an inquiry to review the decision of the head. An Appeals Officer's Report accompanied this notice.

7. By letter dated August 31, 1988, I invited the appellant, the institution and the affected persons to submit written representations on the issues arising from the appeal.
8. Written representations were received from all parties and affected persons and I have considered them in making my Order.

The purposes of the Act as set out in section 1 should be noted. Subsection 1(a) provides the right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter_balancing privacy protection purpose of the Act. The subsection provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide individuals with a right of access to their own personal information.

It should also be noted that section 53 of the Act provides that the burden of proof that the record or part of the record falls within one of the specified exemptions of the Act lies upon the head.

The records at issue in this appeal consist of 62 pages of documentation, the first 24 of which are copies of documents previously provided to the appellant's spouse in response to a request made under the Act.

Some of these 24 pages contain severances and others are exempt in their entirety. The proper treatment of these records by the

institution was the subject of my Order 37 (Appeal Number 880074), dated January 16, 1989, a copy of which was provided to the appellant. I do not intend to make further comment on these pages as part of this Order.

Further, pages 39, 53 and 60 consist of copies of a statement made by Individual B dated April 7, 1987, which were released to the appellant with Individual B's consent.

Before addressing the proper treatment of the remaining records, I should point out that, contrary to the appellant's belief, none of the records at issue in this appeal were authored by or refer to Individual C.

The rest of the records in this appeal consist of statements made by Individuals A and B; Complaint Processing Reports; and an excerpt from an investigating officer's notebook.

As noted previously, the appellant did not request all of these records; her request was limited to records containing personal information about herself. Therefore, I have restricted the scope of my Order to the four records which meet this criteria, and will make no reference to records which consist exclusively of personal information about Individuals A and B or the appellant's spouse. (For a detailed discussion about the appropriateness of the exemptions applied by the institution to records which do not contain personal information about the appellant, please refer to Order 37.)

The four records containing personal information about the appellant are:

1. complaint processing report dated March 31, 1987, respecting complaint from Individual A (of which there are four copies);
2. letter from Individual A, dated April 1, 1987 containing particulars of complaint (of which there are three copies);
3. statement from Individual A dated April 7, 1987 (of which there are three copies);
4. letter from Individual B dated November 3, 1987, containing particulars of complaint (of which there are three copies).

The records in issue involved an employment_related complaint about the appellant's spouse.

The institution has claimed several exemptions in support of its decision to refuse access. In its letter of refusal the institution referred to sections 14, 21 and 49 of the Act. The

head maintains that to release these records would constitute an unjustified invasion of the personal privacy of the individuals who provided the information.

Subsection 47(1) of the Act gives an individual a general right of access to:

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of

an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

However, this right of access under subsection 47(1) is not absolute. Section 49 provides a number of exceptions to this general right of access to personal information by the person to whom it relates. Specifically, subsection 49(b) provides that:

A head may refuse to disclose to the individual to whom the information relates personal information,

...

(b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

...

I considered the proper application of subsection 49(b) of the Act in my Order 37. At page 9 of that Order I state:

The head must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then subsection 49(b) gives him the discretion to deny access to the personal information of the requester.

In deciding what constitutes an unjustified invasion of personal privacy, the head is given guidance by subsections 21(2) and (3) of the Act. Subsection 21(2) sets out some criteria to be considered by the head:

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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

In deciding how to respond to the appellant's request, the head asked for and received representations from the individuals named in the request. After reviewing these representations, the head concluded that the information contained in the records was personal information that related to these affected persons because "...each complaint or statement describes incidents which were taking place in the lives of the complainants...".

Disclosure of this information would, in the opinion of the head, constitute an unjustified invasion of their personal privacy.

The head submitted that the personal information in question was furnished by the individuals in confidence, and that: "...this consideration is supported by paragraph 21(2)(h) of the Act."

The appellant submitted that her privacy "...was unjustly invaded by the O.P.P. who had no right to investigate me in the absence (sic) of any allegations respecting unlawful activity...", and that Individuals A and B "...have made no effort to keep the matter confidential or to protect my right to privacy... My rights to this information would seem to me greatly outweigh the needs of the O.P.P., [Individual A] or [Individual B] to remain confidential...".

As noted above, the records in issue involved an employment-related complaint about the appellant's spouse.

Both the individuals affected by this appeal have objected to the disclosure of their personal information contained in these records.

It is apparent that the head has exercised his discretion in favour of protecting the personal privacy of the affected persons. He decided to sever and withhold those portions of the Complaint Processing Reports which contain personal information relating to other individuals, and to release all portions of these Reports which contain personal information about the

appellant. The head also decided to exempt the letters and statement from Individuals A and B in their entirety.

Having examined these four records, and considered the representations of the appellant and the affected persons, it is my view that disclosure of this information would constitute an unjustified invasion of the personal privacy of Individuals A and B. As such, these records are subject to exemption under subsection 49(b) of the Act.

The head has discretion under section 49 to release a record even if it meets the test of an exemption. The head has exercised his discretion and decided not to release these records. I find nothing improper in the way in which the head has exercised his discretion and would not alter it on appeal.

Because I have found that all four records in question have been properly severed and withheld from disclosure pursuant to subsection 49(b) of the Act, it is not necessary for me to consider the application of any other exemptions cited by the institution.

Accordingly, I uphold the decision of the head.

Original signed by: _____
Sidney B. Linden
Commissioner

March 23, 1989
Date