



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

ORDER P-316

Appeal P-920009

Archives of Ontario



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ORDER

BACKGROUND:

The Archives of Ontario (the institution) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to an April 6, 1976 memo entitled "Position Paper on Grandview", which related to the Grandview Training School.

The record is a two-page memorandum sent to the Minister of Correctional Services from the Ministry's Director of Information Services. It describes four incidents of alleged inappropriate behaviour involving staff and wards at Grandview Training School, and the actions taken by the institution in respect of each incident. None of the individuals involved in the incidents are named in the record.

Partial access to the record was granted. Sections 21(1), 21(2)(f), (g) and (i), and 21(3)(b) and (d) of the Act were relied on by the institution to deny access to the remaining portions of the record. According to the institution, no affected persons were notified before making a decision regarding access "because none of the individuals is specifically named and identifiable in the record at issue".

The requester appealed the institution's decision to this office.

The Appeals Officer assigned to the case obtained and reviewed a copy of the unsevered record. Mediation of the appeal was unsuccessful and the matter proceeded to inquiry. Notices of Inquiry were sent to the institution and the appellant, together with an Appeals Officer's Report, intended to assist the parties in making representations concerning the subject matter of the appeal. Written representations were received from both parties. In its representations, the institution raised sections 14(1)(a) and (b) of the Act as new exemptions, and the appellant was given an opportunity to provide additional representations on these sections.

ISSUES:

The issues arising in this appeal are:

- A. Whether the severed information contained in the record qualifies as "personal information", as defined by section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to any of the severed portions of the record.
- C. If the answer to Issue B is yes, whether there is a compelling public interest in disclosure of the severed information which clearly outweighs the purpose of the section 21 exemption.
- D. Whether the discretionary exemptions provided by sections 14(1)(a) and/or (b) of the Act apply to any of the severed portions of the record.

SUBMISSIONS/CONCLUSION:

ISSUE A: Whether the severed information contained in the record qualifies as "personal information", as defined by section 2(1) of the Act.

Section 2(1) of the Act states, in part:

"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 where 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;

The institution submits that paragraphs (a) and (b) apply because disclosure of the severances would reveal the sex of the wards, the employment history of other individuals, and alleged criminal activity of certain wards. The institution acknowledges that no individual is named in the record, but submits that disclosure of the severances, if linked with information obtained by the appellant from other sources, could make identification of individuals involved in the incidents possible.

The appellant, on the other hand, submits that the severances "seem to go far beyond protecting the identity of people, eliminating even fairly general references in a document in which no-one is named". The appellant states that she has no objection to withholding personal information, but questions the

institution's position that all of the severances contain personal information.

In order to satisfy the requirements of the introductory wording of the definition of personal information, the severances must contain information about identifiable individuals. I have examined the severances and, in my view, none of them contain information which relate to identifiable individuals, and therefore they do not satisfy the requirements of the definition of personal information. The fact that the wards at Grandview Training School were girls, that individuals employed at that facility are identified as staff, and that certain unnamed wards and staff members were investigated as a result of certain incidents which are not specifically described or identified in the record is not sufficient, in my view, to identify a particular individual ward or staff person. I have also been provided with insufficient evidence to accept the institution's position that information otherwise available to the appellant would, if combined with the content of the severances, bring the contents of the severances within the definition of personal information of any identifiable individual.

Having determined that the information at issue does not qualify as personal information, it is not necessary for me to consider Issues B and C.

ISSUE D: Whether the discretionary exemptions provided by sections 14(1)(a) and/or (b) of the Act apply to any of the severed portions of the record.

Sections 14(1)(a) and (b) of the Act read as follows:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

The institution submits that sections 14(1)(a) and (b) apply because the information contained in the severances relates to "law enforcement investigations currently underway by the Waterloo Regional Police and the Ontario Provincial Police".

The words "law enforcement" are defined in section 2(1) of the Act as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

I agree that investigations undertaken by the Waterloo Regional Police and the Ontario Provincial Police would fall within the meaning of law enforcement as defined by the Act. However, that is not sufficient to satisfy the requirements for exemption under sections 14(1)(a) and/or (b). The institution must also establish that release of the records could reasonably be expected to result in specified types of harms listed in these sections.

In Order 188, Commissioner Wright elaborated on the concept of reasonable expectation in the context of section 14, and found that "the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason". He also found that an institution relying on the section 14 exemption bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harms.

The institution submits that disclosure of the record would "hinder carrying out the investigation by prejudicing the determination of facts and the gathering of evidence" It further states that disclosure would have a negative impact on gathering accurate information from the individuals involved in

the incidents which are described in the record, and would also have a negative impact on "an impartial investigation and a fair trial".

The appellant disputes the application of sections 14(1)(a) and (b) and states: "My understanding of the memo is that it relates summaries of incidents that occurred at the school, without naming any names. I fail to see how the release of such information, in which neither perpetrator, victims or witnesses to any alleged incidents [are named], would hinder or impede the criminal investigation".

Having reviewed the contents of the severances and considered all representations, I find that the institution has not provided sufficient evidence to establish that disclosure of the severances could reasonably be expected to lead to the harms identified in sections 14(1)(a) and/or (b). Therefore, I find that the severed information does not qualify for exemption under section 14(1) of the Act.

ORDER:

1. I order the head to disclose the record to the appellant in its entirety within fifteen (15) days from the date of this Order and to advise me in writing, within five (5) days from the date of disclosure, of the date on which disclosure was made. The notice concerning disclosure should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto Ontario M5S 2V1.
2. In order to verify compliance with this Order, I order the head to provide me with a copy of the record which is disclosed to the appellant, only upon my request.

Original signed by: _____

June 16, 1992

Tom Mitchinson
Assistant Commissioner