



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

ORDER P-280

Appeal P-910122

Ministry of Transportation



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléco: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

O R D E R

BACKGROUND:

The appellant's client drives a truck for a living. In response to a letter received from an individual in the early part of 1990, the Ministry of Transportation (the "institution") asked the appellant's client to obtain a medical and psychiatric assessment. If he failed to do so, he was advised that his driver's licence could be suspended. These assessments were provided to the institution by the appellant's family physician and treating psychologist.

On January 21, 1991, the appellant submitted a request to the institution for access to the assessments, and to the name of the person who submitted the letter which precipitated the institution's request for the assessments. On March 5, 1991, the institution provided the appellant with a copy of his client's "Driver's Medical Information Report", and advised him that access to the letter (the "record") was denied, pursuant to section 20 of the Freedom of Information and Protection of Privacy Act (the "Act").

On March 22, 1991, the appellant appealed the decision of the institution to this office.

The Appeals Officer assigned to the case obtained and reviewed a copy of the record. Mediation of the appeal was unsuccessful, and the matter proceeded to inquiry. Notices of Inquiry were sent to the institution, the appellant and the author of the record (the "affected person"). Written representations were received from all three parties.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the 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 record qualifies for the discretionary exemption provided by sections 20 and 49(a) of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the 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,

...

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

The record contains the appellant's date of birth and the views or opinions of the affected person about the appellant. I find that the information contained in the record qualifies as the

"personal information" of the appellant, but not the affected person.

ISSUE B: If the answer to Issue A is yes, whether the record qualifies for the discretionary exemption provided by sections 20 and 49(a) of the Act.

Section 20 provides that:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

Section 49(a) provides that:

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

- (a) where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information; [emphasis added]

Commissioner Tom Wright considered the application of section 20 in Order 188. At page 13 of that Order he stated:

As in section 14, section 20 stipulates that the institution may refuse to disclose a record where doing so could reasonably be expected to [emphasis added] result in a specified type of harm. In my view, section 20 similarly requires that the expectation of a serious threat to the safety or health of an individual, should a record be disclosed, must not be fanciful, imaginary or contrived, but rather one which is based on reason.

I have considered the representations of all parties, and the contents of the assessments prepared by the appellant's family physician and treating psychologist. On the basis of this evidence, I find that the requirements of section 20 have not been satisfied. In my view, I have not been provided with evidence which would raise a reasonable expectation that disclosure of the record would seriously threaten the safety or health of the appellant or any other individual.

Because I have found that the record does not qualify for exemption under section 20, it is not necessary for me to consider the application of section 49(a).

In her representations, counsel for the affected person makes some additional arguments which I will address briefly. First, she submits that section 14 of the Act may apply to the record. Section 14 is a discretionary exemption which the head of the institution may choose to claim in the appropriate circumstances. The head has not done so in this case, and I find that section 14 is not an appropriate consideration in this appeal.

Counsel for the affected person also submits that there is a relevant confidentiality provision in another statute which supports non-disclosure of the record.

Sections 67(2) and (3) of the Act states:

- (2) This Act prevails over a confidentiality provision in any other Act unless subsection (3) or the other Act specifically provides otherwise.

(3) The following confidentiality provisions prevail over this Act:

1. Subsection 57 (1) of the Assessment Act.
2. Subsections 41(8), (9) and (10), 50(4) and (5), 70(5), 71(6), 72(11), 112(6) and 158(a) of the Child and Family Services Act, 1984.
3. Subsection 77(6) of the Colleges Collective Bargaining Act.
4. Section 10 of the Commodity Futures Act.
5. Subsection 51(1) of the Crown Employees Collective Bargaining Act.
6. Subsection 147(2) of the Courts of Justice Act, 1984.
7. Subsection 111(1) of the Labour Relations Act.
8. Subsection 32(4) of the Pay Equity Act.
9. Section 14 of the Securities Act.
10. Subsection 4(2) of the Statistics Act.
11. Subsection 24(2) of the Vital Statistics Act.

The confidentiality provision to which counsel for the affected person refers is not one listed in section 67(3), nor does it specifically provide that it prevails over the Act. Consequently, the Act prevails.

ORDER:

1. I order the head to disclose the record to the appellant.
2. I order that the institution not disclose the record until thirty (30) days following the date of issuance of this order. This time delay is necessary in order to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the records are actually disclosed. Provided notice of an application for judicial review has not been served on the Information and Privacy Commissioner/ Ontario and/or the institution within this thirty (30) day period, I order that the record be disclosed within thirty-five (35) days of the date of this order.
3. The institution is further ordered to advise me in writing within five (5) days of the date of which disclosure was made. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ March 12, 1992