



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

ORDER P-387

Appeal P-910095

Ministry of Health



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ORDER

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of correspondence relating to certain activities of the requester. The Ministry denied access to the responsive records pursuant to sections 14(1)(a), (b), (d) and (f), 14(2)(c) and (d), 20 and 21(1) of the Act. The requester appealed the Ministry's decision.

The records consist of two letters, dated September 25, 1987 and June 8, 1989, and one memorandum. During mediation, the scope of the request was narrowed to include only the signatures of the authors of the September 25, 1987 letter, found on page two.

After being informed of the narrowed request, the Ministry issued a revised decision, denying access to the signatures pursuant to sections 21(1) and 65(2)(a) of the Act.

Further mediation was not possible, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Written representations were received from both parties.

As a preliminary matter, I will consider whether the signatures contained in the record qualify as a "clinical record" under section 65(2)(a), and thereby fall outside the scope of the Act. Section 65(2)(a) provides:

This Act does not apply to a record in respect of a patient in a psychiatric facility as defined by section 1 of the Mental Health Act, where the record,

is a clinical record as defined by section 35(1) of the Mental Health Act.

The Ministry submits that the record is a "clinical record" because the signatures represent the "... names of individuals who at the time resided within a mental health centre. As such, each individual would have a 'clinical record' as defined by section 35(1) of the Mental Health Act". However, the Ministry also acknowledges that the record does not form part of the "clinical record" of the appellant or the individuals who signed the letter.

In order for a record to fall within the scope of section 65(2)(a), it must be in respect of a psychiatric patient, and it must be a "clinical record" as defined by section 35(1) of the Mental Health Act. In my view, the signatures on a letter, in and of themselves, are not sufficient to satisfy these requirements, and I find that section 65(2)(a) does not apply to the record at issue in this appeal.

Therefore, the only remaining issue in this appeal is whether the mandatory exemption provided by section 21(1) of the Act applies to the record.

In order for section 21(1) to apply, the information at issue must be "personal information", as defined in section 2(1) of the Act, which states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

- (h) the individual's name if 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;

Although a name itself does not qualify as an individual's "personal information", where that name appears in the context of a specific complaint filed by an individual, in my view, the name satisfies the requirements of paragraph (h) of the definition. In the circumstances of this appeal, I find that the names of the individuals who signed the letter are the "personal information" of these individuals.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances, specifically "if the disclosure does not constitute an unjustified invasion of personal privacy" (section 21(2)(f)).

Section 21(3) lists the types of information the disclosure of which is presumed to be an unjustified invasion of personal privacy, and section 21(2) provides some criteria for the Ministry to consider in determining whether the disclosure of the record would result in an unjustified invasion of personal privacy.

The Ministry relies on section 21(3)(a) and sections 21(2)(e), (f) and (h) to support its decision to deny access to the record, and the appellant raises sections 21(2)(a) and (d) to support his position that the record should be released.

Section 21(3)(a) states:

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;

In my view, the names of the authors of the record, in and of themselves, are not properly characterized as any of the types of information listed in section 21(3)(a), or any of the other types of information listed in other subsections of section 21(3). Therefore, I find that no presumption of an unjustified invasion of personal privacy exists.

Sections 21(2)(a), (d), (e), (f) and (h) read as follows:

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;
- (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;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence.

The appellant submits that he requires the record for two reasons: to proceed with a request to the Health Disciplines Board to review a decision by the College of Nurses of Ontario regarding a complaint he lodged; and to assist the investigation of a complaint he has filed with the Office of the Ombudsman. He submits that disclosure of the record would subject the activities of the Ministry to public scrutiny (section 21(2)(a)) and would be relevant to a fair determination of his rights (section 21(2)(d)).

In my view, it is not possible for disclosure of the signatures of the authors of the record to subject the activities of the Ministry to public scrutiny, and I find that section 21(2)(a) is not a relevant consideration in the circumstances of this appeal.

In order for section 21(2)(d) to be considered a relevant consideration, the appellant must establish each part of the following four-part test:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; **and**
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**

- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; **and**
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

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I accept that the appellant has the legal right to request a review of a decision of the College of Nurses by the Health Disciplines Board, and to lodge a complaint with the Office of the Ombudsman. However, the appellant has failed to establish that the signatures of the authors of the record may have some bearing on the determination of these rights, or that these signatures are required in order to prepare for the proceedings or to ensure an impartial hearing. Therefore, I find that section 21(2)(d) is also not a relevant consideration in the circumstances of this appeal.

Because none of the factors which weigh in favour of disclosure of the signatures apply in the circumstances of this appeal, it is not necessary for me to consider sections 21(2)(e), (f) and (h), and I find that the mandatory exemption provided by section 21(1) applies to prohibit disclosure of the signatures.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

December 21, 1992