



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

ORDER P-439

Appeal P-9300001

Ministry of Health



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

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 "page 2 of a letter dated September 25, 1987, written to Dr. B. Brian Jones, Unit Director, Social management Unit, Oak Ridge Division, Penetanguishene Mental Health Centre by several individuals." The record consists of the signature of the authors of the September 25, 1987 letter. The Ministry denied access to the record pursuant to section 65(2)(a) of the Act. The requester appealed the Ministry's decision.

Although the Ministry did not claim section 21(1) of the Act to exempt the record, it is apparent from the face of the record that it may contain the personal information of individuals other than the appellant. Therefore, because of the mandatory nature of the section 21(1) exemption, I will also consider its possible application in the circumstances of this appeal.

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.

This same record was the subject of Order P-387, dated December 21, 1992. In Order P-387, I rejected the Ministry's claim under section 65(2)(a) of the Act. As a result, the Ministry withdrew its section 65(2)(a) exemption claim in this appeal.

Therefore, the sole 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 contained in the record must be "personal information", as defined in section 2(1) of the Act. Consistent with my decision in Order P-387, I find that the names of the individuals who signed the letter are the "personal information" of these individuals. I further find that these names are not the personal information of the appellant.

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. Two such circumstances are found in sections 21(1)(a) and (f), which read as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Turning first to section 21(1)(a), the appellant's representations include an affidavit sworn by one of the signatories to the record, which outlines that individual's understanding of the

circumstances at the time the record was submitted to Dr. Jones. Although the affidavit does not include the express consent of that individual to the release of his name, it is clear from the contents of the affidavit that he has no objection to the release of his name to the appellant, and I am prepared to interpret an implied consent on the part of this individual to the release of his name.

The appellant also relies on the content of the affidavit to argue that all individuals who signed the letter implicitly consented to the release of their names. Having carefully read the affidavit, I do not agree, and I find that only the individual who provided the affidavit can be said to have consented to the release of his name.

As far as section 21(1)(f) is concerned, this section is an exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that the section 21(1)(f) exception applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

The appellant's representations focus exclusively on section 21(1)(a) and, because the appellant in this appeal is a different individual from the appellant in Order P-387, I find that the considerations raised in the previous appeal are not relevant in the circumstances of this appeal.

Therefore, in the circumstances of this appeal, the only representations I have been provided with in respect of section 21(1)(f) are those submitted by the Ministry, which weigh in favour of finding that section 21(1)(f) does not apply (sections 21(2)(e), (f), (h) and (i)). Having found that the names on the record qualify as the personal information of the signatories of the record, and in the absence of any evidence or argument weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 21(1)(f) does not apply. Therefore, the remaining names qualify for exemption under section 21(1) of the Act.

ORDER:

1. I order the Ministry to release the name of one of the signatories on the record within fifteen days of the date of this Order. I have attached a highlighted copy of the record with the copy of this order provided to the Ministry which indicates the name which should be released.
2. I uphold the Ministry's decision not to disclose the names of the remaining signatories of the record.

Original signed by: _____
Tom Mitchinson

_____ April 1, 1993

Assistant Commissioner