



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

ORDER P-455

Appeal P-9200481

Ministry of Community and Social Services



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ORDER

BACKGROUND:

The Ministry of Community and Social Services (the Ministry) received a request from an individual under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the admission and treatment of his daughter at the Child Psychiatric Research Institute (CPRI). The requester's daughter is now an adult.

Although the requester provided the Ministry with an authorization to release information signed by his daughter, the Ministry denied access to the records pursuant to sections 21(1)(f) and 49(b) of the Act. The requester appealed the Ministry's decision.

The records at issue include intake and discharge records, progress notes, program plans, lab reports, interview notes and correspondence related to the appellant's daughter.

During mediation, the Ministry advised the Appeals Officer that it had some doubt about the validity of the authorization provided by the requester.

The Appeals Officer attempted to investigate the facts surrounding the issue of authorization in greater detail but was unable to resolve the issue. As a result, a notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry, the appellant and to the appellant's daughter.

Written representations were received from the Ministry and the appellant.

PRELIMINARY ISSUE:

During mediation, the Appeals Officer advised the appellant that the Appeals Officer would like to contact his daughter directly to ascertain her wishes with respect to access and to clarify the matter of authorization. The appellant stated that all communication with his daughter should be made in writing only and sent to his address. The appellant later provided a letter and an affidavit signed by his daughter stating that she authorized her parents to act on her behalf.

In all cases where an individual is seeking access to the personal information of a third party and claims to have authorization for that purpose, it is my responsibility to ensure that the individual has the requisite authority to act in this capacity.

Having considered all of the evidence available to me and having regard to the particularly sensitive nature of the records at issue, it is my view that the documents provided by the appellant do not allow me to conclude that the appellant has the requisite authority to act on behalf of his daughter.

ISSUES:

- A. Whether the information contained in the records 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 parts of the records.
- C. If the answer to Issue A is yes, whether the mandatory exemption provided by section 49(b) of the Act applies to any parts of the records.

DISCUSSIONS/SUBMISSIONS:

ISSUE A: Whether the information contained in the records 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,
...
- (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,
...
- (g) the views or opinions of another individual about the individual,
...

I have reviewed the contents of the records and, in my view, all of the materials contain the personal information of the appellant's daughter, including recorded information which would fall under paragraphs 2(1)(a), (b), (d), (e) and (g) of the definition of personal information. Parts

of the records also contain the personal information of the appellant and other identifiable individuals.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to any parts of the records.

Section 21(1)(f) of the Act states, in part,

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2) and 21(3) of the Act provide guidance on the question of whether the disclosure of personal information would constitute an unjustified invasion of an individual's personal privacy.

Section 21(3) of the Act sets out a list of the types of personal information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. In particular, section 21(3)(a) of the Act provides:

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;

It is my view that all of the personal information at issue in this appeal falls within the parameters of section 21(3)(a) and that its disclosure would constitute a presumed unjustified invasion of the daughter's personal privacy.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy under section 21(3) have been satisfied, I must then consider whether any other provisions of the Act come into play to rebut this presumption.

Section 21(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 21(3). In my view, the records do not contain any information relevant to section 21(4), and this section does not apply to the present case.

In addition, there could exist a combination of factors set out in section 21(2) of the Act which might be so compelling as to outweigh a presumption under section 21(3). However, in my view, such a case would be extremely unusual.

In his representations, the appellant states that he believes that his daughter was improperly admitted to and treated at CPRI. This submission may be relevant to section 21(2)(a) of the Act, which provides 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,

the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

In Order P-368, former Assistant Commissioner Mitchinson considered whether the relevance of one of the circumstances listed in section 21(2) of the Act would be sufficient to rebut the presumption that disclosure of information would constitute an unjustified invasion of personal privacy. He found that the applicability of one section alone is not sufficient to rebut the presumption contained in section 21(3)(b).

I agree with Assistant Commissioner Mitchinson's view, and find that, regardless of whether section 21(2)(a) is a relevant consideration in the circumstance of this appeal, this fact alone would not be sufficient to rebut the presumed unjustified invasion of personal privacy.

Therefore, I find that those parts of the records which contain the personal information of the appellant's daughter qualify for exemption under section 21 of the Act.

ISSUE C: If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies to any parts of the records.

Under Issue A, I found that parts of the records contain the personal information of both the appellant and his daughter. Therefore, I will now consider whether section 49(b) of the Act applies to these portions of the records.

Section 47(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right to access is not absolute. Section 49 provides a number of exemptions to this general right of access. One such exemption is found in section 49(b) of the Act, which reads as follows:

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

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

Section 49(b) of the Act introduces a balancing principle. The Ministry must look at the information and weigh the requester's right of access to his/her own personal information against another individual's right to the protection of his/her privacy. If the Ministry determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, section 49(b) gives the Ministry discretion to deny access to the personal information of the requester.

Under my discussion of Issue B, I concluded that the release of the daughter's personal information would constitute an unjustified invasion of her personal privacy under section 21(3)(b) of the Act, and that this presumption was not rebutted. For the same reasons, I also find that the disclosure of those parts of the records which contain the personal information of both the appellant and his daughter would constitute an unjustified invasion of the daughter's personal privacy.

Section 49(b) is a discretionary exemption which gives the head of an institution the discretion to refuse to disclose personal information to the individual to whom it relates where the disclosure would constitute an unjustified invasion of another person's personal privacy. I find nothing improper with the Ministry's exercise of discretion, and would not alter this decision on appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ May 7, 1993