



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

ORDER P-499

Appeal P-9300135

Ministry of Health



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ORDER

BACKGROUND:

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 all correspondence, memoranda, investigation reports, and complaints made by or concerning the requester, commencing in 1983 through to the present.

The Ministry located records responsive to the request and, following notification of affected parties under section 28 of the Act, decided to release the information with severances made pursuant to section 21. One of the affected parties appealed the Ministry's decision to release the record in which he was named.

Mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the original requester and the Ministry. Representations were received from the Ministry and the original requester.

The record at issue in this appeal consists of a thirteen page transcript of a taped interview with the appellant.

ISSUES:

The issues arising in this appeal are:

- A. Whether the parts of the record the Ministry has decided to disclose contain personal information of the appellant and/or any other individual, as defined by section 2(1) of the Act.
- B. If the answer to Issue A is that the parts of the record the Ministry has decided to disclose contain the personal information of both the appellant and the requester, whether the discretionary exemption in section 49(b) applies.
- C. If the answer to Issue A is that the parts of the record the Ministry has decided to disclose contain the personal information of the appellant only, whether the mandatory exemption provided by section 21 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A. Whether the parts of the record the Ministry has decided to disclose contain personal information of the appellant and/or any other individual, 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,

...

- (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,

...

A review of the record indicates that the record was created for the purpose of investigating allegations made by the requester against the Windsor Provincial Ambulance service and its employees, including the appellant. The appellant was interviewed as part of this investigation.

The Ministry submits that portions of the record contain the personal information of the appellant, and that the severances made by the Ministry removed this information from the record at issue.

The parts of the record the Ministry has decided to disclose contain the appellant's views or opinions about the requester. Pursuant to subparagraphs (e) and (g) of the definition of personal information, this information is the personal information of the requester. Personal information relating solely to the requester does not qualify for exemption under section 21 or 49(b).

In my view, the remaining portions of the record which the Ministry has decided to disclose to the requester relate to both the appellant and the requester, in that the interview relates to an investigation of allegations made by the requester about the appellant, and the appellant was asked at the outset of the interview to provide any information or knowledge he might have of the requester. I find that this information qualifies as the personal information of both the appellant and the affected persons.

Because I have found that the parts of the record the Ministry has decided to disclose do not relate solely to the appellant, it is not necessary for me to consider Issue C.

ISSUE B: If the answer to Issue A is that the parts of the record the Ministry has decided to disclose contain the personal information of both the appellant and the requester, whether the discretionary exemption in section 49(b) applies.

Under Issue A, I found that parts of the record contain the personal information of both the appellant and the requester.

Section 47(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of the Ministry. However, this right of access is not absolute; section 49 provides a number of exceptions to this general right of access to personal information by the person to whom it relates. Specifically, section 49(b) of the Act states:

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) 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 their privacy. If the Ministry determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the Ministry the discretion to deny access to the personal information of the requester.

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 49(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester. Section 21(3) lists the type of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In my view, the record does not contain any information of the types listed in section 21(3). Section 21(2) lists factors which must be considered in determining whether or not the disclosure of personal information would constitute an unjustified invasion of personal privacy. The appellant has not indicated that any of the factors listed in section 21(2) are relevant to the circumstances of this appeal, and in my

view, section 21(2) does not apply. Accordingly, I am not convinced that disclosure of the record would constitute an unjustified invasion of the appellant's privacy. In my view, the record does not qualify for exemption under section 49(b).

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____July 16, 1993