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

ORDER P-540

Appeal P-9200830

Ministry of Community and Social Services

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ORDER

BACKGROUND:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) from an individual for two copies of his Vocational Rehabilitation file for the period from November 22, 1982 to November 6, 1992. The requester, who is visually impaired, asked that one copy be sent to him in regular format and that the other be provided in 24 point type (enlarged) bold print.

The Ministry provided the requester with a copy of his file in regular print, but refused to supply him with a second copy in an enlarged format. In its decision letter, the Ministry submitted that sections 30(1) and (3) of the Act governed the extent of its statutory obligations in this case. These sections essentially provide that a requester is to be given access to a copy of the record to which he or she is entitled, unless it would not be reasonably practicable to reproduce the record by reason of its length or nature.

The decision letter further indicated that it would cost approximately $420 to enlarge the documents and that one of the Ministry's employees had already spent several hours with the requester, at which time portions of the file were read to him. Based on these considerations, the Ministry took the position that it had complied with its obligations under section 30 of the Act. The requester appealed the Ministry's decision.

During the mediation stage of the appeal, the Ministry agreed to provide the appellant with a total of 39 pages of records in the file in 24 point bold type print. As the appeal proceeded, it also became clear that the appellant was relying on the provisions of the Ontario Human Rights Code (the Code) to support his position that the Ministry was obliged to provide his personal information to him in an enlarged format. This was a case, therefore, where the appellant had the option of filing a complaint against the Ministry with the Ontario Human Rights Commission. The appellant has chosen, however, to pursue his appeal with the Commissioner's Office under the Act.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. In the Notice of Inquiry, the parties were asked to comment on the potential applicability of section 48(4) of the Act and the provisions of the Code to the facts of the appeal. In its representations, the Ministry indicated that its original estimate of $420 to reformat the file was too low and that an estimate of $2,688 more accurately reflected the costs which would be incurred.

ISSUES:

A. Whether section 30 of the Act applies to the records at issue in this appeal.

B. Whether section 48(4) of the Act requires that the Ministry provide the appellant with his personal information in 24 point bold type print.

C. Whether the Commissioner's office is required to interpret the provisions of section 48(4) of the Act according to the principles set out in section 11(1)(a) of the Code.

D. Whether the Ministry's decision not to provide the personal information to the appellant in an enlarged format infringes his rights under section 11(1)(a) of the Code.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether section 30 of the Act applies to the records at issue in this appeal.

The Ministry has relied on section 30 of the Act to support its position that it is not obliged to provide the relevant records to the appellant in an enlarged format. Sections 30(1), (2) and (3) of the Act read as follows:

> (1) Subject to subsection (2), a person who is given access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practicable to reproduce the record or part thereof by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part thereof in accordance with the regulations.
>
> (2) Where a person requests the opportunity to examine a record or a part thereof and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations.
>
> (3) Where a person examines a record or part thereof and wishes to have portions of it copied, the person shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

Section 30 falls under Part II of the Act which governs how requests for general records are to be processed. This section describes the manner in which requesters may examine records which are disclosed under this Part of the legislation.

The present appeal, however, involves a request by an individual for access to his own personal information. Requests of this nature fall under Part III, rather than Part II, of the Act. The result is that section 48(4) of the Act, and not section 30, defines how the information is to be provided to this requester. Thus, the contents of section 30 of the Act are not applicable to the facts of this appeal.

ISSUE B: Whether section 48(4) of the Act requires that the Ministry provide the appellant with his personal information in 24 point bold type print.

Section 48(4) of the Act reads as follows:

> Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a **comprehensible format** and in a manner which indicates the general terms and conditions under which the personal information is stored and used. (emphasis added)

In its representations respecting this section, the Ministry indicated that:

> A "comprehensible format" would indicate a format that would provide an opportunity to understand information that is documented and held by an institution. Equipped with a photocopy of the file documentation which could be interpreted by any doctor or professional in this client's field if he so desired, along with the personalized service or interpretation that was offered by his [Vocational Rehabilitation Services] Counsellor, the appellant was provided sufficient opportunity to consider the information to be in a comprehensible format.

The Ministry then states that the appellant's counsellor, during a personal interview, read portions of the file to the appellant and interpreted this information for him. The Ministry also points out that this interview was attended by the appellant's spouse who is sighted.

Counsel for the appellant presents the following argument with respect to the interpretation of this provision:

> Subsection 48(4) plainly reads that personal information must be provided in a form comprehensible to the individual. If a person has copies of documents and cannot understand them, there is no use in providing those copies.

In Order 19, former Commissioner Sidney B. Linden considered the meaning of section 48(4). In that order he stated:

> I agree that subsection 48(4) of the Act does place a duty on the head to "ensure that the personal information is provided to the individual in a comprehensible form". Clearly, the subsection creates a duty to ensure that the average person can comprehend the record. For example, a computer-coded record would be incomprehensible to the average person if provided without the key which will 'unlock' it.

> But, does subsection 48(4) create a further duty on the head to assess a specific requester's ability to comprehend a particular record? With respect, I do not think that it does.

I agree with Commissioner Linden that, based on the scheme of the Act, the term "comprehensible" must be interpreted according to an objective standard.

I will now apply this analysis to the facts of the present appeal. When the Ministry provided the appellant with a copy of his file in an ordinary print format, the information would have been comprehensible to an average person. Based, therefore, on the application of an objective interpretative standard, the result is that the Ministry provided the information in a comprehensible format for the purposes of section 48(4) of the Act. The corollary of this proposition is that the Ministry (or any other institution) would have no obligation under the Act to provide personal information to a visually impaired person in a format which he/she found more appropriate.

ISSUE C: Whether the Commissioner's office is required to interpret the provisions of section 48(4) of the Act according to the principles set out in section 11(1)(a) of the Code.

In their representations, both the appellant and the Ministry have commented on the application of the Code to the facts of this appeal. Under administrative law principles, I have an obligation to take into account all considerations which are relevant to the disposition of a case. On this basis, I will now consider my authority to apply the provisions of the Code in order to determine whether the law places any additional obligations on the Ministry in a fact situation such as this.

There are three provisions contained in the Code which I will need to consider for the purposes of this analysis. These are sections 1, 11(1)(a) and 11(2). Section 1 of the Code states as follows:

> Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or **handicap**. (emphasis added)

Section 11(1)(a) of the Code prescribes that:

> A right of a person under Part 1 [in which section 1 is found] is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

> (a) the requirement, qualification, or factor is reasonable and *bona fide* in the circumstances;

Finally, section 11(2) of the Code specifies that:

> The Commission, a board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The threshold question for me to determine is whether the Commissioner's office has the authority to apply section 11 of the Code to the interpretation of section 48(4) of the Act. My thinking on this subject has been guided by two considerations. First, the Code is a piece of remedial legislation which is intended to apply broadly to the laws of this province. Second, other administrative bodies within the province (e.g. labour boards of arbitration) have determined that they have the requisite authority to apply the Code to the legislation that they interpret.

Based on these considerations, and in the absence of any specific representations on this point from the Ministry, I find that the Commissioner's office has an obligation to interpret section 48(4) of the Act according to the principles set out in section 11(1)(a) of the Code.

ISSUE D: Whether the Ministry's decision not to provide the personal information to the appellant in an enlarged format infringes his rights under section 11(1)(a) of the Code.

The Ministry takes the position that it recognized the appellant's special needs and took steps which were reasonable in the circumstances to help the appellant understand and become familiar with his file. In particular, the Ministry (1) authorized the appellant's Vocational Rehabilitation Counsellor to spend several hours with him to discuss the contents of the file and (2) during the course of mediation, transcribed a total of 39 pages of the appellant's file in enlarged print. The Ministry also points out that, when the appellant met with his counsellor, the appellant was accompanied by his sighted wife who was, herself, permitted to review the file.

The Ministry then indicates that, while it considered the appellant's request to have his entire file reprinted in enlarged type, it considered that the expenditure of $2,668 for this purpose would be prohibitive, particularly in light of the budgetary constraints to which the Ministry is now subject.

In his representations, counsel for the appellant made reference to a Management Board Guideline entitled Print-Handicapped Communications: A Manager's Guide and indicated that the guideline applied to the facts of this case in the following way:

> Although the Management Board [Guideline] is designed only to deal with written publications, the principle behind this excerpt can be applied to the [appellant's] situation. If the Ministry knows in advance that it is dealing with a visually impaired individual and would not be involved with him but for the impairment, it should be required to prepare its information in such a way that the client can assess it.

In its representations, the Ministry submits that the Management Board Guideline extends only to written publications or pamphlets about Ministry services and programs which are provided to the general public and does not extend to information contained in files relating to Ministry clients.

I have reviewed this Guideline and I am satisfied that it does not apply where a visually impaired requester is seeking access to his or her own personal information.

This appeal represents the first occasion where the Commissioner's office has been required to apply the principles contained in the Code to a provision of the Act. I have found this task to be difficult, particularly in the absence of any direction provided in the Act to balance the competing interests.

I have carefully reviewed the representations provided to me and considered all the circumstances of the appeal. I find that, had the Ministry interpreted section 48(4) of the Act based on an objective standard and applied the provision in this fashion without any effort to assist the requester, there would have arisen a restriction of the appellant's rights as a handicapped person pursuant to section 11(1)(a) of the Code, and a prima facie breach of the provisions of the Code.

On the facts of this case, however, I believe that the Ministry recognized the appellant's special needs. I also find that the steps which the Ministry took to assist the appellant to comprehend his file allowed the appellant to effectively access his personal information. My conclusion, therefore, is that the Ministry's decision not to transcribe the appellant's entire file into 24 point type bold print does not represent a contravention of section 11(1)(a) of the Code.

ORDER:

I uphold the Ministry's decision.

POSTSCRIPT:

As I have indicated previously in this order, the task of defining the rights of visually impaired individuals to obtain access to their personal information is a difficult one in the absence of clear statutory direction. Although not raised in the present appeal, the same comment would apply to requests from these individuals for access to general records.

These subjects have been addressed legislatively under the federal access and privacy schemes under section 12(3) of the Access to Information Act and section 17(3) of the Privacy Act, respectively. In the same light, I believe that there is a need for the Government of Ontario to clearly establish the obligations of institutions when responding to access requests filed by visually impaired requesters. While such direction should, ideally, be provided within the provincial and municipal Acts, themselves, the promulgation of a Management Board Guideline would represent a useful first step.

Original signed by: September 24, 1993
Irwin Glasberg
Assistant Commissioner