



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

ORDER P-568

Appeal P-9300312

Ministry of the Solicitor General and Correctional Services



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ORDER

BACKGROUND:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for information on the deaths of eight girls, who died between 1965 and 1976 while purportedly registered at the Grandview Training School for Girls (Grandview). The requester specifically sought access to the Coroner's reports prepared in relation to each of these deaths. In the alternative, he indicated that he would accept information respecting the name of each deceased, the age of the individual at death, the cause of death and the home town of the individual.

In its decision letter, the Ministry granted access to a briefing note prepared on the subject. The Ministry then identified eight Coroner's reports as the records which were responsive to the particulars of the request. The Ministry chose, however, to withhold these records from disclosure in their entirety pursuant to sections 14(1)(a), 21(1)(f), 21(2)(f) and (g), and 21(3)(a) and (b) of the Act. The requester appealed the Ministry's decision.

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. Representations were received from both parties.

In his representations, the appellant submitted that the public has a right to receive information pertaining to the deaths of the former Crown wards. On this basis, the appellant has implicitly raised the application of section 23 of the Act (the so-called public interest override).

ISSUES:

The issues which will I will need to address in this appeal are set out below:

- A. Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption set out in section 21 of the Act applies to the information in the records.
- C. If the answer to Issue B is yes, whether there is a compelling public interest in the disclosure of the records which clearly outweighs the purpose of the exemption provided by section 21 of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.

[IPC Order P-568/November 2, 1993]

Section 2(1) states, in part, that:

"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,
...
- (h) the individual's name where 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;

Section 2(2) of the Act specifies that:

Personal information does not include information about an individual who has been dead for more than thirty years.

In his representations, the appellant acknowledges that, by virtue of section of 2(2) of the Act, personal information does not include information about individuals who have been dead for more than 30 years. He argues, however, that it does not necessarily follow that, where an individual has been dead for less than 30 years, the release of information about that person would necessarily compromise that individual's privacy interests. The appellant then submits that, in the circumstances of this appeal, the privacy rights of the deceased wards "would be extinguished by the lengthy lapse of time".

The Ministry takes the position that, because the eight former Crown wards have been dead for less than 30 years, section 2(2) has no application to the facts of the case. The Ministry further states that, with the current interest generated by the Grandview investigations, the privacy rights of the deceased have not been diminished but have, in fact, been heightened.

In my view, the wording of section 2(2) is clear. Personal information will only lose this designation where it pertains to an individual who has been dead for more than 30 years. Where an individual has been dead for less than this time period, any personal information about the

individual retains this status. In light of this analysis, I find that the eight coroner's reports contain recorded information about the deceased individuals and, therefore, qualify as "personal information" for the purposes of section 2(1) of the Act.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption set out in section 21 of the Act applies to the information in the records.

Once it has been determined that a record contains personal information, section 21 of the Act provides a general rule of non-disclosure of the personal information to any person other than the individual to whom the personal information relates. Section 21(1) provides some exceptions to this general rule of non-disclosure, one of which is section 21(1)(f) of the Act. This provision reads as follows:

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.

In order for section 21(1)(f) to apply, I must find that the release of the personal information at issue would **not** constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. In Order M-170, Commissioner Tom Wright addressed the interrelationship between sections 14(2), (3) and (4) of the Municipal Freedom of Information and Protection of Privacy Act (which are similar to sections 21(2), (3) and (4) of the Act) in the following way:

... [W]here personal information falls within one of the presumptions found in section 14(3) of the Act, a combination of the circumstances set out in section 14(2) of the Act which weigh in favour of disclosure, cannot collectively operate to rebut the presumption.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption.

I adopt this approach for the purposes of this order.

In its representations, the Ministry submits that the Coroner's reports contain medical information pertaining to the causes and circumstances of the deaths of the eight former Crown wards. On this basis, the Ministry states that the presumption contained in section 21(3)(a) of the Act applies to the personal information found in these records. This provision states that:

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 Order P-519, I found that a Coroner's report (which included the results of blood, urine and tissue sampling as well as the Coroner's observations about the cause of death) constituted personal information about the medical condition of the deceased. I then concluded that the information fell within the section 21(3)(a) presumption and that the disclosure of this information would constitute a presumed unjustified invasion of personal privacy of the deceased.

The Coroner's reports which are at issue in the present appeal contain the same generic type of information as the report which was considered in Order P-519. On this basis, I similarly conclude that the contents of each of the records relates to a medical diagnosis, condition or evaluation for the purposes of section 21(3)(a) of the Act and that the release of this information would constitute a presumed unjustified invasion of the personal privacy of the individuals to whom this information relates.

As indicated previously, the only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act or if a finding is made that the information warrants disclosure under section 23 of the Act. It follows that the argument that the passage of time has diminished the privacy interests in the information would be insufficient to dislodge the application of the presumption.

I have considered section 21(4) and find that none of the personal information at issue in this appeal falls within the ambit of this provision. I will deal with the potential applicability of section 23 of the Act in the next section of this order.

ISSUE C: If the answer to Issue B is yes, whether there is a compelling public interest in the disclosure of the records which clearly outweighs the purpose of the exemption provided by section 21 of the Act.

I have found under Issue B that the disclosure of the personal information found in the Coroner's reports would constitute an unjustified invasion of personal privacy under section 21(3)(a) of the Act. That being the case, I must now go on to consider the implicit argument made by the appellant that, despite the findings which I have made, this information should be disclosed pursuant to the public interest override found in section 23 of the Act. This provision states as follows:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

The appellant submits that the information in the records should be disclosed as:

These females died while registered at a public institution. The public has a right to have their names and any other information contained in the Coroner's reports so that the public can assess this situation for themselves.

In order for section 23 of the Act to apply, two requirements must be met. First, there must be a compelling public interest in the disclosure of the record. Second, this compelling interest must clearly outweigh the purpose of the exemption (Order 24). Based on the facts of this appeal, I must, therefore, determine whether there is a compelling public interest in the disclosure of the personal information in the Coroner's reports which clearly outweighs the purpose of the section 21 exemption.

In undertaking this analysis, I am mindful of the fact that section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. Second, in the context of the present appeal, the Ministry has already released a briefing note to the appellant which describes in some detail the circumstances under which the Coroner's reports were compiled. In my view, this level of disclosure should provide the appellant with a general level of understanding of the Ministry's investigation.

Based on these considerations, I find that there does not exist a compelling public interest in the disclosure of the remaining personal information that clearly outweighs the purpose of the section 21 exemption. On this basis, my decision is that section 23 of the Act does not apply in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ November 2, 1993