



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

ORDER P-673

Appeal P-9200373

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 a father for access to various records relating to himself and his son. The father indicated that such information was likely to be found in the Ministry's Day Nurseries Branch or in the Office of Child and Family Service Advocacy.

The Ministry located a number of records that contained the father's own personal information and granted access to these documents to him in full. The Ministry refused, however, to disclose those records which contained the personal information of his son or the other named individuals, either in whole or in part, based on the exemption contained in section 21 of the Act (invasion of another individual's privacy). The father appealed the Ministry's decision.

During the mediation stage of the appeal, the father made reference to two sets of handwritten notes which he also considered to be responsive to the request. The Ministry located these documents and granted partial access to their contents. The remainder of these materials were withheld under section 21 of the Act.

At the time that the relevant documents were authored, the son was nine years of age. He is now 14.

The further mediation of this appeal was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry and the father. Representations were received from both parties.

There are a total of 13 records at issue in this appeal which comprise 39 pages in total. These records are described in Appendix "A" which is attached to this order. Records A-5 and B-1 are duplicates of each other.

ISSUES:

The issues arising in this appeal are the following:

- A. Whether the records contain "personal information" as defined in section 2(1) of the Act.
- B. If the records contain the personal information of the son, whether the father is entitled to obtain access to this information under section 66(c) of the Act.
- C. If section 66(c) of the Act is not applicable and the records contain the personal information of individuals other than the father, whether the mandatory exemption contained in section 21 of the Act applies to the personal information contained in the records.

- D. If the records contain the personal information of the father and other individuals, whether the discretionary exemption contained in section 49(b) of the Act applies to the personal information contained in the records.

SUBMISSIONS/CONCLUSIONS:

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

Under section 2(1) of the Act, personal information is defined, in part, to mean recorded information about an identifiable individual, including 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.

I have reviewed the 13 records at issue in this appeal and the representations provided by the parties. I find that each of the documents contains personal information relating to the son and that some of the documents also contain the personal information of other named individuals. In addition, Records A-5, B-1, B-4, B-31 and C-1 include personal information which relates to the father. I find, however, that the first page and the first two lines of the second page of Record B-32 do not contain any personal information and should, thus, be released to the father.

ISSUE B: If the records contain the personal information of the son, whether the father is entitled to obtain access to this information under section 66(c) of the Act.

By virtue of section 47(1) of the Act, every individual has a right to obtain access to his or her own personal information which falls under the custody or control of a government institution. Under section 66 of the Act, these access rights may, in certain defined circumstances, be exercised on behalf of the individual by another party.

In the present appeal, the father has purported to make an access request on behalf of his son who is presently under the age of 16. On this basis, I must determine whether the father is entitled to obtain disclosure of the personal information which relates to his son under section 66(c) of the Act. This provision states that:

Any right or power conferred on an individual by this Act may be exercised

where the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

The first step in this analysis is to determine whether the father has lawful custody of his son, who is now 14 years of age, for the purposes of this provision. Based on the evidence before me, I am satisfied that the father is the custodial parent and, therefore, that he has lawful custody of his son.

In his representations, the father submits that the wording of section 66(c) allows parents to obtain unfettered access to information about their children who are under the age of 16. The father also makes reference to the wording contained in what is now section 184(1) of the Child and Family Services Act to support his position that the personal information about his son should be released to him. This provision, which is as yet unproclaimed, prescribes that a parent shall have access to the records of a child who is under the age of 16 except in certain defined circumstances.

The representations of the father further indicate that he suspects that the Ministry is denying access to the records because it wishes to avoid public scrutiny. Finally, the father asserts that "no physical or emotional harm could come to the child as a result of the release of the relevant material".

The Ministry, on the other hand, takes the position that a parent who has legal custody of a child may only exercise the child's right **on behalf of the child** and not for a collateral purpose. The Ministry further submits that it was not the intention of the legislature that section 66(c) of the Act should impinge unnecessarily on a child's privacy rights.

The records at issue in the present appeal relate to a custody and child protection dispute involving the father and his former spouse. The documents also explain the roles of the Ministry's Office of Child and Family Service Advocacy (OCFSA), the Children's Aid Society of Metropolitan Toronto (CASMT) and other government agencies in dealing with these matters. The records collectively contain extremely sensitive information including the views of a very young child on this difficult situation.

I have carefully reviewed the representations provided to me in conjunction with the records at issue. While the father has argued that he requires his son's personal information to determine whether the various government agencies acted within their statutory mandates, he has failed to convince me that he is exercising such a right of access on behalf of his son. Rather, my conclusion is that the father, while acting in good faith, is seeking this information to meet his personal objectives and not those of his son.

I also find, based on the sensitive nature of the materials contained in the records, that the release of the son's personal information would not serve the best interests of the child.

For these reasons, I concur with the Ministry that the father is not entitled to rely on section 66(c) of the Act to obtain access to his son's personal information. The result is that the father's right to receive the personal information of his son will depend on an analysis of the other relevant provisions of the Act.

ISSUE C: If section 66(c) of the Act is not applicable, and the records contain the personal information of individuals other than the father, whether the mandatory exemption contained in section 21 of the Act applies to the personal information contained in the records.

I have previously found that the information contained in the 13 records at issue qualifies as the personal information of the son and that some of the records also contain the personal information of named individuals other than the father. The discussion in this section of the

order will consider only those records which do **not** contain the father's personal information. The documents in which the father's personal information is found will be canvassed under Issue D below.

Section 21(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than the individual to whom the information relates. There are a number of exceptions to this rule, one of which is found in section 21(1)(f) of the Act. This section provides that an institution must refuse to release personal information of other individuals except if the disclosure does 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. I have carefully reviewed the contents of the records at issue and find that neither section 21(3) nor 21(4) apply to the personal information in question.

If none of the presumptions in section 21(3) are applicable, the Ministry must consider the relevance of the factors listed in section 21(2) of the Act, as well as all other relevant circumstances that apply in the case.

In his representations, the father submits that sections 21(2)(a) (public scrutiny of the Ministry) and 21(2)(d) (fair determination of the appellant's rights) of the Act weigh in favour of disclosing his son's personal information.

The Ministry, on the other hand, relies on three considerations set out in section 21(2) to support its position that the son's privacy rights should be protected. These are section 21(2)(f) (highly sensitive information), section 21(2)(h) (information supplied in confidence) and section 21(2)(i) (unfair damage to the reputation of the person to whom the personal information relates).

I will first deal with the considerations under section 21(2) of the Act which weigh in favour of disclosing the personal information contained in the records.

Public Scrutiny - Section 21(2)(a)

Section 21(2)(a) of the Act provides that, in considering whether the disclosure of personal information constitutes an unjustified invasion of personal privacy, a Ministry shall consider whether such disclosure is desirable for the purposes of subjecting the activities of the Government of Ontario or its agencies to public scrutiny.

In his representations, the father submits that a Provincial Court Judge who presided over a child protection proceeding involving his son raised concerns about the conduct of the government agencies involved in this case. The father has provided the Commissioner's office with the full text of the Judge's decision in support of this position. The father then asserts that, by withholding the information contained in the records, the Ministry is seeking to avoid public scrutiny of its activities.

In determining whether section 21(2)(a) applies to the personal information in question, I believe that the following four factors are relevant. First, the criticisms which the Provincial Court Judge directed towards the relevant Children's Aid Society were made in open court and form part of a public record. Second, the father has stated that he has already received, through the

litigation process, affidavits from the Ministry regarding statements taken from his son. Third, in the context of the present access request, the father has also been provided with the majority of the records relating to the Ministry's involvement in the matters at issue. Finally, the Office of the Ontario Ombudsman, at the request of the father, has undertaken an investigation of the Ministry's conduct.

I have carefully reviewed the representations provided to me in conjunction with the records at issue. Based principally on the degree of disclosure which the father has already received and the fact that this case has been the subject of investigation by two public authorities, I am not persuaded that the release of the personal information still at issue is desirable in order to submit the activities of the Ministry to public scrutiny. This information, it should be recalled, relates principally a young child and not to the conduct of a government institution. On this basis, I find that section 21(2)(a) is not a relevant consideration in the circumstances of this appeal.

Fair Determination of the Appellant's Rights - Section 21(2)(d)

The appellant has not provided the Commissioner's office with any specific evidence to indicate why section 21(2)(d) is a factor which weighs in favour of disclosing the personal information contained in the records to him. On this basis, I find that this section is not a relevant consideration on the facts of the appeal.

To summarize, therefore, I find that none of the factors raised by the father weigh in favour of disclosing the personal information contained in the records.

I will now examine two of the considerations outlined in section 21(2) of the Act which predispose towards protecting the privacy interests of the son and the other named individuals.

Highly Sensitive Information - Section 21(2)(f)

The Ministry submits that the information found in the records, which relates to the custody and protection proceedings involving the father, his former spouse and his son, are highly sensitive in nature. For personal information to be considered "highly sensitive", the Ministry must establish that the disclosure of the information would cause excessive personal distress to the individuals mentioned in the records (Order P-434).

Following a careful review of the records, and the circumstances in which they were produced, I find that the personal information contained in the documents can be characterized as "highly sensitive" for the purposes of the Act. On this basis, I find that section 21(2)(f) is a factor which weighs in favour of protecting the privacy interests of the individuals concerned.

Expectation of Confidentiality - Section 21(2)(h)

The Ministry also submits that the personal information found in the records was supplied to the Ministry in confidence under section 21(2)(h) of the Act. More specifically, the Ministry states that individuals who contact the OCFSA typically seek and are provided with assurances that the information which they supply will be held in confidence. The Ministry then states that:

this assurance is critical in order for the Advocacy Office to fulfil its role of co-ordinating a system of advocacy on behalf of children and families.

Based on the evidence provided to me, I accept that the personal information contained in the records was supplied by the individuals in question in confidence. On this basis, I find that section 21(2)(h) is also a factor which weighs in favour of protecting the privacy interests of the son and the other individuals referred to in the records.

To summarize, I have found that there do not exist any factors set out in section 21(2) of the Act which favour the disclosure of the personal information contained in the records. I have also determined that there are two considerations (highly sensitive information and the expectation of confidentiality) which weigh in favour of protecting the personal information of the parties concerned. On this basis, I find that the disclosure of the personal information at issue would constitute an unjustified invasion of the personal privacy of the son and the other individuals mentioned in the records. This information must, therefore, not be released to the father.

ISSUE D: If the records contain the personal information of the father and other individuals, whether the discretionary exemption contained in section 49(b) of the Act applies to the personal information contained in the records.

Under my discussion of Issue A, I found that Records A-5, B-1, B-4, B-31 and C-1 contain the personal information of both the father and other named individuals. The discussion in this section of the order will be restricted to these five records.

As indicated previously, section 47(1) of the Act gives individuals a general right of access to their own personal information held by a Ministry. Section 49 provides a number of exceptions to this general right of access, one of which is found in section 49(b) of the Act.

Under this section, where a record contains the personal information of both the requester and other individuals and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the requester access to this information. Once again, sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of the personal information would result in an unjustified invasion of personal privacy.

Under my earlier discussion of section 21 of the Act, I concluded that none of the presumptions found in section 21(3) applied to the personal information contained in the records which were considered under that part of the order. I also found that the factors outlined in sections 21(2)(f) and (h) of the Act supported a finding that the release of the personal information in these records would result in an unjustified invasion of the personal privacy of other individuals.

Following a careful review of the remaining five records, I have reached similar conclusions with the exception of one line in Record C-3 which solely comprises the father's personal information. The result is that the disclosure of these records (with the one exception noted) would also constitute an unjustified invasion of the privacy interests of other individuals. The Ministry should, therefore, not release this information to the father.

Section 49(b) is a discretionary exemption. On this basis, I have reviewed the Ministry's exercise of discretion in refusing to disclose the personal information referred to in these records

to the father. I find nothing improper in the manner in which this discretion was exercised in the circumstances of this case.

ORDER:

1. I order the Ministry to disclose to the appellant the first page and the first two lines of the second page of Record B-32 as well as the third line of Record C-1 within 15 days of the date of this order.
2. I uphold the Ministry's decision not to disclose Records A-5, B-1, B-2, B-3, B-4, B-20, B-21, B-23, B-27, B-28, B-31 in their entirety and the remaining parts of Records B-32 and C-1 not referred to in Provision 1 of this order.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1 **only** upon request.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ May 6, 1994

APPENDIX "A"

INDEX OF RECORDS AT ISSUE			
RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTION CLAIMED	DECISION ON RECORD
A-5 (4 pages)	Client Data Sheet respecting the son prepared by the Office of Child and Family Service Advocacy (OCFSA) dated June 26, 1989	21	Withheld
B-1 (4 pages)	Duplicate of Record A-5	21	Withheld
B-2 (1 page)	Three telephone message slips dated March 1990	21	Withheld
B-3 (2 pages)	Notes of telephone conversations	21	Withheld
B-4 (2 pages)	Letter from an employee of the OCFSA to an employee of the Children's Aid Society of Metropolitan Toronto (CASMT) dated September 22, 1989	21	Withheld
B-20 (2 pages)	Letter from an employee of the OCFSA to an employee of the Office of the Official Guardian (OG) dated July 10, 1989	21	Withheld
B-21 (2 pages)	Letter from an employee of the OG to an employee of the OCFSA dated July 24, 1989	21	Withheld
B-23 (1 page)	Letter from an employee of the OCFSA dated August 31, 1989	21	Withheld
B-27 (2 pages)	Handwritten notes which are undated	21	Withheld
B-28 (1 page)	Letter from an employee of the OCFSA to a named individual dated November 9, 1989	21	Withheld
B-31 (2 pages)	Handwritten notes dated November 15, 1989	21	Withheld
B-32 (3 Pages)	Handwritten notes authored by an employee of the CASMT	21	Withheld in part
C-1 (13 pages)	Handwritten notes authored by an employee of the CASMT	21	Withheld in part