



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

ORDER P-675

Appeal P-9300619

Ministry of the Solicitor General and Correctional Services



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ORDER

NATURE OF THE APPEAL:

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 access to the contents of the requester's probation file since his release from a correctional facility. In particular, the requester sought access to any psychological reports and assessments contained in the file.

The Ministry identified a total of 81 pages of records that were responsive to the request and granted access to 68 of these pages in full. The Ministry decided, however, to withhold portions of the remaining 13 pages by virtue of the following exemptions contained in the Act:

- information about an individual under the control of a correctional authority - section 14(2)(d)
- danger to the safety or health of an individual - section 20
- invasion of privacy - section 21
- danger to mental or physical health of the requester - section 49(d).

During the mediation stage of the appeal, the requester (now the appellant) indicated that the focus of his appeal now related solely to the psychological assessments contained in his file.

This appeal could not be further mediated and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry, the appellant and to two individuals whose interests might be affected by the outcome of the appeal (the affected persons). Formal representations were received from the Ministry and the two affected persons only. The appellant asked that the information which he had previously provided to Commissioner's office serve as his representations.

In its representations, the Ministry indicated that it had chosen to withdraw its reliance on the section 49(d) exemption. In addition, because of the narrowed scope of the appeal, section 21 of the Act is no longer at issue. Finally, one of the affected persons consented to the disclosure of information contained in the documentation which related to him. The Ministry then provided the appellant with access to two additional pages of the records in which this information was found.

The information which remains at issue in this appeal comprises the materials which have been withheld from pages 38, 39, 43, 48, 57, 63 and 66 of the records.

More specifically, pages 38, 39, 43 and 48 contain a series of handwritten notes labelled "Record of Case Supervision". Page 57 is the second page of a three-page "Psychological Assessment".

Finally, page 63 contains typewritten notes while page 66 is a one-page letter from one of the Ministry's Probation and Parole Officers to a probation office in another jurisdiction.

ISSUES:

The issues arising in this appeal are:

- A. Whether the records contain "personal information" as defined in section 2(1) of the Act.
- B. Whether the records qualify for exemption under the discretionary exemption provided by section 14(2)(d) of the Act.
- C. Whether the records qualify for exemption under the discretionary exemption provided by section 20 of the Act.

DISCUSSION:

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

The parties to the appeal concur that the information contained in the seven pages at issue constitute the personal information of the appellant only. I agree.

ISSUE B: Whether the records qualify for exemption under the discretionary exemption provided by section 14(2)(d) of the Act.

The Ministry claims that the information contained in the records is exempt from disclosure under section 14(2)(d) of the Act. This provision allows a Ministry to refuse to disclose a record that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

In Order 98, former Commissioner Sidney B. Linden interpreted the wording of section 14(2)(d) in the following fashion:

In my view, the purpose of subsection 14(2)(d) is to allow an appropriate level of security with respect to the records of individuals in custody. I am not prepared to extend the application of this provision so far as to allow it to be used to deny access to information simply on the basis that the requester, no longer in custody, is seeking information about himself.

I agree with this interpretation and adopt it for the purposes of this appeal.

In its representations, the Ministry indicates that, when the appellant filed his access request, he was on probation after having served a prison sentence. On March 11, 1994, however, the probation order expired. Since the appellant is no longer under the control or supervision of a correctional authority, I find that the section 14(2)(d) exemption does not apply to the information at issue.

ISSUE C: Whether the records qualify for exemption under the discretionary exemption provided by section 20 of the Act.

The Ministry also submits that the records are exempt from disclosure under section 20 of the Act. This provision provides that a Ministry may refuse to disclose a record where its release could reasonably be expected to seriously threaten the safety or health of an individual.

In order for section 20 to apply to the information at issue in this appeal, there must exist a reasonable expectation of a serious threat to health or safety. The possibility of harm is not sufficient. At a minimum, the Ministry must establish a clear and direct linkage between the disclosure of the information and the harm which it alleges.

I have carefully reviewed the representations provided to me in conjunction with the pages of the records at issue. Based on the evidence before me, I am not persuaded that the disclosure of the information to the appellant could reasonably be expected to seriously threaten the safety or health of any individual. Consequently, I find that the requirements for exemption under section 20 have not been met.

HOW THE APPELLANT SHOULD RECEIVE HIS INFORMATION:

In this order, I have found that neither of the two exemptions which the Ministry has claimed applies to the personal information which has been withheld from the appellant. The result is that the Ministry must now disclose this information to him. In reviewing the pages to be released, however, I note that several contain a number of psychiatric terms which are not described or explained in any detailed fashion.

In his letter of appeal, the appellant indicated that his physician has volunteered to interpret any information contained in the records which might be released to him. Based on the nature of the information to be disclosed, I believe that such a prior review by the appellant's physician would be very useful and I would encourage the appellant to pursue this course.

ORDER:

1. I direct the appellant to contact the Ministry's Freedom of Information Co-ordinator to indicate whether he prefers to receive this information directly or would consent to have the information disclosed to a physician of his choice.
2. In the event that the appellant consents to have the records disclosed to his physician, I order the Ministry to release the records at issue to the named physician, along with an

appropriate covering letter, within thirty-five (35) days following the date that the appellant informs the Ministry of his choice and not earlier than the thirtieth (30th) day following the date that this contact is made. The designated physician would then review the records with the appellant and provide the records to him.

3. In the event that the appellant chooses to receive the records directly, I order the Ministry to disclose the records at issue to him, within thirty-five (35) days following the date that the appellant informs the Ministry of his choice and not earlier than the thirtieth (30th) day following the date that this contact is made.
4. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the records which are disclosed to the physician or the appellant, as the case may be, pursuant to Provisions 2 and 3, **only** upon request.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ May 10, 1994