



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-861

Appeal P-9400566

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Community and Social Services (the Ministry) received a request for access to all information contained in the requester and his family's Crown Ward File. The Ministry granted partial access to 58 records, which consist of various letters and other documents. The Ministry numbered the records from page 1 to 56; two additional pages were not numbered. These two pages consist of a Court Order dated November 2, 1972 and, for the purposes of this appeal, have been numbered pages 57 and 58. The Ministry relied on the following exemption to deny access:

- invasion of privacy - section 21(1)

The requester appealed the denial of access. On November 15, 1994 a settlement agreement was reached between the parties to the appeal. By November 29, 1994, however, the Ministry had not fulfilled the settlement agreement, despite assurances that it was its intention to do so. Accordingly, the Appeals Officer informed the parties that the appeal would be moving into the inquiry stage.

A Notice of Inquiry was provided to the appellant and the Ministry, and three other individuals identified in the record (the affected persons). Because it appeared that the record contained the personal information of the appellant as well as other individuals, the Appeals Officer asked for representations on the possible application of section 49(b). This section provides a discretionary exemption in situations where an individual has requested access to his or her own personal information, and disclosure would constitute an unjustified invasion of the personal privacy of another individual or individuals. Representations were received from the appellant and the affected persons only.

In their representations the three affected persons consent to the disclosure of their personal information to the appellant. Accordingly, the following parts of the record should be disclosed to the appellant: pages 1-14, 17, 25, 34 and 37-42 in their entirety; and pages 15-16, 18-24 and 36, in part.

As representations had not been received from the Ministry and there had been no indication that the original settlement agreement had been carried out, the Appeals Officer again contacted the Ministry to ascertain its intentions. The Ministry's Policy Analyst with carriage of the file informed the Appeals Officer that representations would not be forthcoming as the Ministry intended on proceeding with the original settlement but provided no explanation as to why this had not yet been accomplished. The Analyst further informed the Appeals Officer that she would look into the delay.

On January 4, 1995, as the Appeals Officer received no further information from the Ministry, he made a further follow up telephone call to the Analyst and left a message that she contact him. This call went unanswered.

Accordingly, due to the Ministry's failure, without explanation, to satisfy the terms of the agreed upon settlement or, in the alternative, to provide me with representations in response to this inquiry, I will proceed

to issue my order disposing of the outstanding issues of this appeal. The pages remaining at issue are portions of pages 15-16, 18-24 and 36 and pages 43-56 in their entirety.

PRELIMINARY MATTER:

In his representations the appellant claims that section "54(a)" of the Act is a relevant consideration in determining whether disclosure of the personal information of two deceased members of his family should be ordered in the circumstances of this appeal. In support of this claim he has provided me with two "Certificates for Legal Aid" and a "Form 19 - Notice of Appeal to an Area Committee".

Prior to discussing this issue, I would like to note that the appellant has made reference to section 54(a) of the Municipal Freedom of Information and Protection of Privacy Act. However, as this matter involves an appeal under the provincial Act, the relevant section is section 66(a).

Under section 66(a), the appellant would be able to exercise the deceased's right to request and be granted access to the deceased's personal information if he is able to:

1. demonstrate that he is the "personal representative" of the deceased; and
2. demonstrate that his request for access "relates to the administration of the deceased's estate".

The documents which the appellant has supplied with his representations clearly indicate that he is not the personal representative of the deceased and, therefore, section 66(a) is not a relevant consideration in the circumstances of this appeal.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual. I have reviewed the remaining information at issue and I find that it satisfies the definition of personal information. In my view, the personal information is about two individuals other than the appellant.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access. Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals, the Ministry must weigh the requester's right to his/her own personal information against the privacy interests of other individuals. If 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 that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

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

As stated above, the Ministry has not provided me with any representations.

Having reviewed the representations and the pages at issue, I have made the following findings:

- (1) It appears that there may exist a legal right related to a proceeding contemplated by the appellant. Based on the evidence provided to me, I am not convinced, however, that the personal information is **significant** to the determination of the right in question or that it is **required** in order to prepare for the proceeding or to ensure an impartial hearing. I, therefore, find that section 21(2)(d) is not a relevant consideration in this appeal (Order P-312).
- (2) In balancing the interests of the appellant in disclosure of the personal information and the privacy interests of the other individuals, I find that disclosure of the personal information of the deceased individuals would constitute an unjustified invasion of their personal privacy. In my view, it would be appropriate to apply section 49(b) to the severed portions of pages 15-16, 18-24 and 36 and pages 43-56 in their entirety.

ORDER:

1. I order the Ministry to disclose to the appellant pages 1-14, 17, 25, 34, 37-42 and 57-58 of the record in their entirety and pages 15-16, 18-24 and 36 in accordance with the highlighted copy of these pages provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order, within thirty-five (35) days of the date of this order but not earlier than the thirtieth (30th) day after the date of this order. The highlighted portions indicate those portions which are **not** to be disclosed.
2. I order the Ministry not to disclose pages 43-56 and the highlighted portions of pages 15-16, 18-24 and 36.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the pages which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ February 9, 1995