



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-895

Appeal P-9400657

Ministry of Health



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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 Health (the Ministry) received a request for access to all records relating to a Health Disciplines Board (the Board) review of a decision of the College of Physicians and Surgeons concerning a complaint brought by the requester. The complaint was directed at a doctor (the doctor) who had performed surgery on the requester's adult daughter. The daughter was not a party to the complaint.

The Ministry located responsive records and granted partial access to them. The Ministry relies on the following exemption in denying access to the remaining records:

- invasion of privacy - section 21(1)

The requester appealed the Ministry's decision. During the mediation stage of the appeal, the appellant clarified the scope of her appeal and indicated that she was only seeking access to a portion of a one-page handwritten note.

A Notice of Inquiry was provided to the Ministry and the appellant, as well as the appellant's daughter, a friend of the daughter (the friend) who was referred to in the record, and the doctor (the affected persons). Because it appeared that the portions of the record at issue could contain the personal information of the appellant, the Notice of Inquiry also raised the possible application of section 49(b) of the Act (invasion of privacy).

Representations were received from the appellant, the Ministry and the doctor.

## **PRELIMINARY MATTER:**

### **RECORD AT ISSUE**

As I indicated above, the appellant clarified during mediation that the only record she was interested in pursuing consisted of a portion of a one-page handwritten note. The Appeals Officer assigned to this file confirmed this with the appellant, in writing, and identified this note as the only record at issue in the Notice of Inquiry.

The appellant indicates in her representations that she would like all other documents to be reviewed as well. I assume by this, the appellant is referring to other responsive records to which the exemption in section 21(1) has been applied.

In reviewing the records in their entirety it is clear that access has been denied to other records. However, it is equally clear, from the documentation in the appeals file, that the appellant was seeking a review solely of the Ministry's decision relating to one portion of the one-page note. Although the appellant's letter of appeal was very general, the parameters of this appeal were clarified by her and they cannot be expanded at this late stage in the proceedings.

The record at issue, therefore, consists of part of a one-page handwritten note containing a record of a phone conversation between the doctor's secretary and the friend, dated November, 1991. For ease of reference, I will refer to the portion of the record at issue as the "note to file".

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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 note to file and the representations of the parties. I find that it contains references to the appellant, her daughter, the friend and the doctor, in the context of the appellant's complaint about the doctor. In my view, the note to file contains the personal information of all four individuals.

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 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 that information.

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. 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 where 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 contained in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Ministry claims that disclosure of the note to file would constitute an unjustified invasion of the personal privacy of the individuals named therein as it contains information which relates to the daughter's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation (section 21(3)(a)) and the information is highly sensitive (section 21(2)(f)).

The appellant states that the note to file was read out at the Board's review and was provided to the Board members, but she was not provided with a copy. She indicates further that, in her view, the note to file contains slanderous information about her, and she requires a copy of the record in order to correct the information contained in it and to add her comments to the file.

I have reviewed the note to file and I find that parts of it contain a discussion between the friend and the doctor (by way of the doctor's secretary) about the daughter's surgery. In my view, this information relates directly to the daughter's medical treatment and disclosure of it would be presumed to be an unjustified invasion of the daughter's personal privacy under section 21(3)(a).

The note to file, as a whole, contains discussions between the daughter's friend and the doctor's secretary which relate to the appellant's complaint and the views of the daughter's friend with respect to the matter. In my view, in the context in which the note was created, it contains information which is highly sensitive. I find, therefore, that section 21(2)(f) is a relevant consideration and this factor weighs in favour of privacy protection.

The fact that the information was read out at the Board's review of the appellant's complaint does not negate the application of section 21(2) or (3). The appellant has not provided any evidence in support of any factors which weigh in favour of disclosure.

I have found that the presumption contained in section 21(3)(a) applies to part of the record, and that one factor found in section 21(2)(f), which weighs in favour of privacy protection, applies to the note to file in its entirety. I find that neither section 21(4) nor section 23 applies to rebut the presumption in section 21(3)(a).

I find, therefore, that disclosure of the note to file would constitute an unjustified invasion of the personal privacy of individuals other than the appellant. Accordingly, the exemption in section 49(b) applies to exempt the record from disclosure.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_  
March 30, 1995