



Information and Privacy
Commissioner/Ontario

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

ORDER P-926

Appeal P-9400635

Ministry of Community and Social Services



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ATURE 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 letters, forms and information relating to an allegation of child abuse made against the requester. The Ministry identified a serious occurrence report as the only record responsive to the request and denied access to it in its entirety. The requester appealed the Ministry's decision to deny access.

The appellant is a former foster parent of the individual who was the subject of the alleged abuse (the complainant). The alleged abuse took place during the time that the complainant was receiving foster care in the appellant's home.

The three-page Serious Occurrence Report consists of a letter from the Director of Services of the Children's Aid Society to a Program Supervisor at the Ministry, a Serious Occurrence Preliminary Inquiry Report and a description of the Serious Occurrence. In this order, any reference to the record means the three-page serious occurrence report.

The Ministry relies upon the following exemptions to deny access to the record:

- law enforcement - sections 14(1)(a) and (b)
- right to a fair trial - section 14(1)(f)
- discretion to refuse requester's own information - section 49(a)
- invasion of privacy - sections 21(1), 49(b)

A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

In its representations, the Ministry indicated that it was no longer relying on the discretionary exemptions provided by sections 14(1)(a), (b) and (f) and 49(a) of the Act. I will therefore not consider the application of these exemptions to the record.

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 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 information in the record. I find that it satisfies the definition of personal information. In my view, the personal information in the record relates to both the appellant and the complainant.

The record also makes reference to other identifiable individuals. In my view, the references to these individuals are made in their professional capacity or in the execution of their employment responsibilities and therefore, do not constitute "personal information" within the meaning of section 2(1) (Orders P-333 and P-377).

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 rights 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 the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such an exemption 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 Ministry 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.

In its representations, the Ministry cites the following provisions, which, if applicable, weigh in favour of privacy protection:

- the information is highly sensitive - section 21(2)(f)
- the information was supplied in confidence - section 21(2)(h)

The appellant submits that the exact nature of the allegations have never been made known to him and that he should be given access to the information so that he can defend himself. By inference, the appellant is raising the application of section 21(2)(d) (fair determination of his rights). The appellant also submits that the name of the complainant, already known to him, could be severed from the record and the balance of the record could then be disclosed to him.

Previous orders of the Commissioner's office have determined that in order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; **and**
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; **and**
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[Orders P-312 and P-387]

The appellant submits that his legal right to the information at issue is guaranteed by the Charter. The appellant states that he requires access to the information because it relates to the determination of his rights and to prepare for a hearing process which is ongoing.

I have carefully reviewed the representations of the parties together with the information in the record. Many past orders of the Commissioner's office have considered the application of sections 21(2)(f) and (h) in the context of personal information generated as a result of workplace and/or sexual harassment investigations (Order P-656 and P-738).

In many of these orders, sections 21(2)(f) and (h) were found not to weigh in favour of protection of that information which directly addresses the substance of the complaints and this information was ordered disclosed. The general principle underlying the approach taken in past orders ensures that when the respondent in a harassment complaint seeks information, he /she is advised of the substance of the accusations and the identity of the complainant. In order to achieve this result, the respondent needs access to information which he or she has provided to the investigator as well as information provided by the complainant and information from other witnesses or individuals involved in the investigation.

In my view, while the general principles articulated in those orders are valuable guidelines, the circumstances of this case are distinct. The present case involves an allegation of child abuse which in my view, is quite different from harassment alleged to have occurred between two adults.

In this case, the nature of the allegation, the fact that the alleged perpetrator was functioning in a position of trust and the age of the complainant are all factors that further distinguish this case from the circumstances considered in previous orders. In addition, the appellant is aware of the identity of the complainant, the nature of the complaint and the results of the investigation conducted by the Children's Aid Society of the

County of Essex. Given the particular circumstances of this case, I find that sections 21(2)(f) and (h) are factors that weigh in favour of non-disclosure of any additional personal information.

I have also carefully considered the representations of the appellant with respect to the application of section 21(2)(d). In my view, in the circumstances of this case, section 21(2)(d) which weighs in favour of disclosure is a relevant factor but it does not outweigh the factors in support of the protection of the privacy of the complainant.

Having balanced the factors favouring privacy protection against the appellant's right to access his own personal information, and having considered all the particular circumstances of this appeal, I find that disclosure of the personal information of the complainant in the record would be an unjustified invasion of the personal privacy of this individual. Accordingly, the exemption in section 49(b) applies to exempt the record from disclosure.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ May 16, 1995