



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-930

Appeal P-9500070

Ministry of Community and Social Services



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **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 all records relating to allegations of abuse made against the requester in July 1994. The request sought access to the original complaint, witness statements and a final report provided by a named investigator. The Ministry denied access to the records on the basis of the law enforcement exemption in section 14 of the Act.

During mediation, the Ministry disclosed some of the records that it had previously withheld and issued a revised decision letter with respect to the remaining records. In the new decision letter, the Ministry indicated that it was no longer relying on the exemption provided under section 14 of the Act.

The records that remain at issue consist of printed internal Ministry electronic mail messages, a memorandum and correspondence. These are described in Appendix "A" to this order.

The Ministry relies on the following exemptions to deny access to the records:

- invasion of privacy - sections 21 and 49(b)
- solicitor-client privilege - section 19
- discretion to refuse requester's own information - section 49(a)

A Notice of Inquiry was provided to the appellant and her authorized representative and to the Ministry. Representations were received from the Ministry only.

## **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 find that the records contain personal information. As I have indicated previously, the records relate to allegations of abuse made against the appellant while employed at a Ministry residential camp for developmentally handicapped persons. Accordingly, I find that the personal information relates to the appellant and the individual involved in the incident(s).

I will consider the application of the section 49(b) exemption to Records A7, A8, A20 and A25. I will consider Record A23 in my discussion of the application of sections 19 and 49(a) of the Act.

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 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.

The Ministry claims that disclosure of the records would constitute an unjustified invasion of the personal privacy of the individual named therein as it contains information which relates to that individual's medical history, diagnosis, condition, treatment or evaluation (section 21(3)(a)).

I have carefully reviewed Records A7, A8, A20 and A25 and the representations of the Ministry. I make the following findings:

- (1) I find that the information in these records relates directly to the medical history, condition, treatment and evaluation of the individual named therein and disclosure of it would be presumed to be an unjustified invasion of that individual's personal privacy under section 21(3)(a).
- (2) I find that neither section 21(4) nor section 23 applies to rebut the presumption in section 21(3)(a).
- (3) I find, therefore, that disclosure of Records A7, A8, A20 and A25 to the appellant would constitute an unjustified invasion of the personal privacy of the individual named therein. Accordingly, the exemption in section 49(b) applies to exempt these records from disclosure.

## **SOLICITOR/CLIENT PRIVILEGE AND DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION**

Section 19 reads as follows:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of

or for use in litigation.

Section 19 consists of two branches, which provide an institution with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1); and
2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The Ministry submits that Record A23 qualifies under Branch 1 of the exemption.

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the Ministry must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication; **and**
  - (b) the communication must be of a confidential nature; **and**
  - (c) the communication must be between a client (or his agent) and a legal advisor; **and**
  - (d) the communication must be directly related to seeking, formulating or giving legal advice;

OR

2. the record was created or obtained especially for the lawyers brief for existing or contemplated litigation (Order 49).

Record A23 is an inter-office memorandum from an administrator to the Ministry's legal services branch with a facsimile and cover sheet attached to it. I find that the record consists of a written communication of a confidential nature between solicitor and client and relates to the seeking of legal advice. Accordingly, the record qualifies for exemption under Branch 1 of the section 19 exemption.

I have previously found that Record A23 also contains the personal information of the appellant.

Under section 49(a) of the Act, the Ministry has the discretion to deny access to records which contain an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include the solicitor-client privilege exemption provided by section 19.

I have reviewed the factors considered by the Ministry in the exercise of its discretion in favour of refusing to disclose the information to the appellant. I find nothing improper in the determination which has been made and would not alter it on appeal. Therefore, Record A23 is exempt from disclosure under section 49(a) of the Act.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_

Mumtaz Jiwan

Inquiry Officer

\_\_\_\_\_ May 18, 1995

## APPENDIX "A"

RECORDS AT ISSUE IN THIS APPEAL		
RECORD	DESCRIPTION	EXEMPTION CLAIMED
A7	Internal Ministry electronic mail message dated July 8, 1994	s. 21(1), 49(b)
A8	Internal Ministry electronic mail message dated July 11, 1994	s. 21(1), 49(b)
A20	Ministry memorandum dated October, 19, 1994	s. 21(1), 49(b)
A23	Internal Ministry electronic mail to Legal Services dated November 14, 1994	s. 19, 49(a)
A25	Internal Ministry electronic mail dated November 30, 1994	s. 21(1), 49(b)