



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1123

Appeal P-9500633

Criminal Injuries Compensation Board



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NATURE OF THE APPEAL:

The Criminal Injuries Compensation Board (the Board) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to a claim for compensation made to the Board by a named individual (the victim). The requester is the alleged perpetrator of certain criminal acts against the victim and may be liable to reimburse the Board for any award made to the victim by the Board under the subrogation provisions of section 26(2) of the Compensation for Victims of Crime Act.

The Board located 121 pages of responsive records and disclosed 33 pages in their entirety to the requester. The Board denied access in full to the remaining 88 pages of records under sections 21 and 49(b) of the Act (invasion of privacy). The requester appealed the Board's decision to deny access.

A Notice of Inquiry was provided by the Appeals Officer to the Board, the appellant and to another individual whose rights may be affected by the disclosure of the information contained in the records (the affected person). Representations were received from all of the parties.

PRELIMINARY ISSUE:

APPLICATION OF SECTION 8 OF THE STATUTORY POWERS PROCEDURES ACT

Section 8 of the Statutory Powers Procedure Act (the SPPA) states:

Where the good character, propriety of conduct or competence of a party is in issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto.

The appellant argues that this provision of the SPPA requires that the Board provide to him sufficient information to enable him to address the issues to be disposed of at the Board's upcoming hearing which relates to the entitlement of the victim to compensation. He submits that he has not been provided with the particulars of the offence which gave rise to the claim for damages from the Board. In addition, the appellant argues that the Board is subject to the disclosure rules provided by the SPPA and that he is prejudiced by not being provided with the requested information.

Section 52(2) of the Act states that the SPPA does not apply to an inquiry to review a head's decision to deny access to requested records. I am not, accordingly, bound by the disclosure provisions of the SPPA in the conduct of this inquiry.

Further, I do not have the jurisdiction to review, or comment on, the disclosure mechanisms which may exist at the Board and are tied to its mandate to administer its own processes. The sole issue which I am empowered to determine in this inquiry is whether the exemptions claimed by the Board apply to the records at issue in this appeal. I am unable, accordingly, to make a finding as to the sufficiency of the disclosure of records made by the Board beyond the context of the provisions in the Act.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records at issue and make the following findings:

- (1) Records 1, 5, 6, 8, 9, 10, 11, 13, 14, 16, 18, 21, 22, 23, 24, 25, 26, 27, 27, 29, 20-32, 33, 33, 34-45, 47, 48, 54, 64, 66, 69, 71, 72, 73, 74, 75, 76, 77, 78, 117 and 118-121 contain the personal information only of individuals other than the appellant;
- (2) Records 2, 3, 4, 7, 12, 15, 17, 19, 20, 46, 49, 50, 51, 52, 53, 61, 62, 63, 65, 67, 68, 70 and 79-87 contain the personal information of the appellant and other identifiable individuals.

The Board indicates that a copy of Record 115-116, a record completed by a police officer indicating the alleged offences which have given rise to the claim for compensation dated January 20, 1993, has been disclosed to the appellant. This document is not, accordingly, at issue in this appeal.

INVASION OF PRIVACY

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 personal information of both the appellant and other individuals, and the Board determines that the disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the Board has the discretion to deny the appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to his or her own personal information, the only situation under section 49(b) in which he or she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual’s personal privacy.

Where, however, the record only contains the personal information of other individuals, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it “... does not constitute an unjustified invasion of personal privacy”.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would result in 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 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 Board must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant to the appeal.

The Board submits that the presumption in section 21(3)(a) applies to Records 2, 3-7, 8-11, 12, 13, 15-16, 17-18, 19, 20-26, 27-29, 30-32, 33, 34-45, 48, 63-65, 66-78 and 79-87 as these documents contain information pertaining to the victim's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. I have reviewed these records and find that Records 4, 5, 6, 8-13, 15-16, 17-18, 19, 20-26, 27-29, 33, 34-45, 48, 63, 64, 65, 67-69, 70, 71, 72 73-74 and 79-87 contain information which falls within the ambit of the presumption under section 21(3)(b). Accordingly, I find that the disclosure of the personal information contained in these records is presumed to constitute an unjustified invasion of the personal privacy of the victim.

The Board submits that the presumption in section 21(3)(d) applies to the personal information contained in Records 14 and 30-32. These records consist of a resume and detailed work history involving individuals other than the appellant. I find that the presumption in section 21(3)(d) applies to these records in their entirety and, accordingly, their disclosure would result in a presumed unjustified invasion of the personal privacy of the individuals to whom the records relate.

I will now set out the factors listed in section 21(2) raised by the Board which weigh against the disclosure of the information contained in Records 1, 2, 3, 7, 46, 47, 49, 50-51, 52, 53, 54, 61, 62, 66, 75, 76, 77, 78, 117, 118-119, 120 and 121, which do not fall within either of the presumptions. The Board submits that the considerations listed in sections 21(2)(e) (pecuniary or other harm) and 21(2)(f) (highly sensitive) weigh against the disclosure of the personal information contained in these records, particularly that information which would serve to locate the victim. I agree that these are significant factors favouring privacy protection in the circumstances of this appeal.

The appellant argues that the consideration found in section 21(2)(d) (fair determination of rights) is an important factor weighing in favour of the disclosure of the information contained in the remaining records. I find that this factor is also significant and weighs in favour of the disclosure of the personal information found in these records.

I have considered the representations of the parties and have carefully reviewed Records 1, 2, 3, 7, 46, 47, 49, 50-51, 52, 53, 54, 61, 62, 66, 75, 76, 77, 78, 117, 118-119, 120 and 121, which consist of correspondence between staff of the Board and the victim, and internal Board documents relating to the progress of the victim's application. I find that balancing the privacy interests of the victim against the appellant's right to information which will assist him in

knowing the case he has to meet before the Board is very difficult in the circumstances surrounding this appeal. I am mindful, however, of the fact that the appellant has been acquitted of the criminal charges which were laid as a result of the complaints of the victim and other individuals. The appellant is, therefore, aware of the nature of the allegations made against him by the victim as well as their impact on her, generally.

I find that the disclosure of the personal information of the victim which is contained in these records would constitute an unjustified invasion of her personal privacy. The remaining information is of an administrative nature and its disclosure would not result in an unjustified invasion. I have highlighted on the copy of Records 1, 2, 3, 7, 46, 47, 49, 50-51, 53, 54, 61, 62, 66, 75, 76, 77, 78, 117, 118, 120 and 121 which I have provided to the Board's Freedom of Information and Privacy Co-ordinator those portions of these records which should **not** be disclosed to the appellant.

The appellant has not argued that any of the exceptions contained in section 21(4) apply to the information in these records. I will address the appellant's arguments on the application of section 23 to the records below.

PUBLIC INTEREST IN DISCLOSURE

The appellant has raised the application of section 23, the public interest override, to the information contained in the records. This section states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, and **21** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (my emphasis)

In Order P-984, Inquiry Officer Holly Big Canoe examined the component parts of section 23 of the provincial Act, which is the equivalent of section 16 of the Act. She held that:

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

The appellant has not made any reference to the nature of the public interest which may exist in the disclosure of the records, nor has he made any submissions as to how this public interest might clearly outweigh the privacy protection provisions of sections 21 and 49(b). I find that as I have not been provided with any evidence that there is a compelling public interest in the disclosure of the records, section 23 has no application in the circumstances of this appeal.

ORDER:

1. I order the Board to disclose the information which is **not** highlighted on the copy of Records 1, 2, 3, 7, 46, 47, 49, 50-51, 53, 54, 61, 62, 66, 75, 76, 77, 78, 117, 118, 120 and 121 which I have provided to the Board's Freedom of Information and Privacy

Co-ordinator by sending the appellant a copy no later than **March 19, 1996** but not before **March 14, 1996**.

2. I uphold the Board's decision to deny access to the remaining information contained in the records.
3. In order to verify compliance with this order, I reserve the right to require the Board to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____ February 13, 1996
Donald Hale
Inquiry Officer