



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1138

Appeal P-9500670

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 copies of records relating to the Thistleton Regional Centre (the Centre). In particular, the request was for all written records pertaining to the Independent Review of the Centre commissioned by the Ministry in February, 1993. The request was made on behalf of an interest group by the group's counsel. I will refer to the interest group as the appellant throughout this order.

The Ministry identified five responsive records and granted the appellant full access to four of them. Partial access was granted to Record 5, which is a 60 page report titled "Thistleton Regional Centre Operational Review" (the Review). The Ministry denied access to portions of pages 52, 59 and 60 and to pages 53 - 58 in their entirety pursuant to section 14(1)(f) of the Act (right to fair trial).

The appellant appealed this decision to deny access. In its letter of appeal, the appellant also indicated that more records should exist which would be responsive to the request. In this regard, the appellant described two categories of records which it sought in its request, but which were not identified by the Ministry. These record categories include records submitted to the team which reviewed operations at the Centre (the review team) and any records of the meetings of the review team.

Following receipt of the Confirmation of Appeal, the Ministry issued a revised decision letter in which it withdrew the exemption in section 14(1)(f). The Ministry then advised the appellant that it was claiming the exemption in section 49(b) of the Act (invasion of privacy) for the withheld information.

A Notice of Inquiry was sent to the appellant and the Ministry. In the Notice, the Appeals Officer raised the possible application of section 21(1) (invasion of privacy) as an issue in the appeal.

Representations were received from both parties. The Ministry's representations include an affidavit sworn by the Project Manager of the Ministry's Mississauga Area Office. In its representations, the Ministry withdrew its reliance on section 49(b), and indicated that it now relies on section 21(1) to exempt the record at issue. I will deal with this issue below in my discussion of "Invasion of Privacy".

DISCUSSION:

REASONABLENESS OF SEARCH

In its representations, the appellant refers to Appendix "C" of the Review which indicates that the appellant was one of 87 "informants" who were consulted as part of this review. The appellant states that it submitted written documentation to the review team, and that this information should have been considered responsive to the request. Moreover, the appellant argues that it is likely that at least some of the other 86 "informants" also submitted written documentation to the review team.

In his affidavit, the Project Manager outlines the steps taken to search for records responsive to this request. He states that, initially, his search for responsive records was conducted only in the Ministry's Mississauga Area Office. This search produced the five records referred to above. The Project Manager states further that minutes of internal meetings, and other documents which he had submitted to the review team, were destroyed prior to the request being received.

The Project Manager indicates that following receipt of the Confirmation of Appeal, he conducted a further search for responsive records in the Mississauga Area Office and expanded the search to include contact with the private consultant who was appointed by the government to conduct the review (the consultant), and one of his assistants (the assistant). The Project Manager indicates that following completion of this review, the consultant closed his office in Ontario and relocated in British Columbia.

The consultant advised the Project Manager that most of his records were destroyed prior to relocating his office. However, he may have one file containing handwritten notes from public meetings. The consultant agreed to send any records he still retained to the Ministry. The assistant also had a file which contains minutes of meetings held with parents, and this file was forwarded to the Ministry. The Ministry indicated that it would review the records received from the assistant and issue a decision to the appellant by February 23, 1996. The Ministry has not yet received the file from the consultant, but has undertaken to review it upon receipt and issue a decision to the appellant.

In reviewing the representations submitted by the parties and the affidavit provided by the Project Manager, I am satisfied that the steps taken by the Ministry to locate records responsive to the request were reasonable in the circumstances.

A decision was not issued by February 23, 1996 regarding the records forwarded to the Ministry by the assistant. The Ministry indicates that the then upcoming OPSEU strike created some delay in its Freedom of Information office. The Ministry has assured this office, however, that it will make every effort to complete the work on this file as expeditiously as possible. Because of the OPSEU strike, it would not be practical to order the Ministry to issue a decision regarding these records by a specific date. However, I remain seized of this matter. If the appellant has not received a decision within a reasonable period of time, taking into account the limitation on Ministry resources during the strike, it may notify me, in writing, that it wishes to proceed with this matter. This notification should be sent to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

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 parts of the record at issue, and I note that no individual has been mentioned by name in them.

The Ministry refers to previous orders of the Commissioner's office (Orders M-287 and M-378), and submits that the decisions in these orders have held that a record may contain personal information where individuals are not mentioned by name if these individuals are readily

identifiable by individuals who are familiar with the circumstances surrounding the creation of the record.

In general, I agree with this approach. However, I have had occasion to consider similar arguments in the context of different types of reviews of government departments (Orders P-964 and P-1023). In Order P-1023, I found that

[a]ny audit of a government department will likely impact on the individuals working in that department, either favourably or unfavourably. In these situations, an employee cannot expect to maintain complete anonymity with respect to the results of this kind of review.

In my view, the extent to which a record describing the audit results can be found to contain the personal information of an individual depends on the focus of the audit and the nature of the information pertaining to the individual, which has been included in the audit results.

As I indicated above, Record 5 is a report of an operational review of the Centre. The Review focuses on organizational, administrative, financial and human resources management systems of the Centre. The withheld portions of this record are contained in a part of the record titled "Management actions in relation to allegations of sexual harassment". The Ministry states that these portions of the record describe incidents of alleged sexual harassment, and that both the alleged harasser and victims can be identified from this information.

I have reviewed this record and I agree that there is sufficient description of the allegations in parts of the withheld portions to identify the individuals involved. In my view, allegations of sexual harassment are serious and reflect personally on the individuals involved. I find that by its nature, this information is personal to the individuals who can be identified and it, therefore, qualifies as personal information.

However, I find that other portions of this record do not relate to the specifics of the allegations, but rather reflect management's approach in dealing with this situation and harassment in general. In my view, these portions of the record do not contain personal information and neither section 21(1) nor 49(b) is applicable in exempting this information from disclosure. I have highlighted the portions of these pages which do not contain personal information on the copies which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order. As no other exemptions have been claimed for them, the highlighted portions of the record at issue should be disclosed to the appellant.

INVASION OF PRIVACY

As I indicated above, the Ministry is no longer relying on the exemption in section 49(b) to withhold the information at issue. Rather, it claims that section 21(1) is applicable. Both these sections deal with whether or not disclosure of personal information in a record would constitute an unjustified invasion of personal privacy. The analysis of this issue is conducted under section 49(b) in cases where a record contains the personal information of the requester. Where a record

only contains the personal information of individuals other than the requester, the analysis is conducted under section 21(1).

In the above discussion, I found that the record at issue contains the personal information of a number of individuals who could be identified by the contextual nature of the information. The record does not contain the personal information of the appellant's counsel or the individual members of the interest group. Accordingly, section 49(b) is not applicable in the circumstances of this appeal.

Once it has been determined that a record contains personal information, section 21 of the Act prohibits the disclosure of this information except in certain circumstances. Section 21(1) is a mandatory exemption and I will, therefore, consider its possible application to the record at issue.

The only exception in section 21(1) 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 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 submits that information pertaining to allegations of sexual harassment are highly sensitive (section 21(2)(f)).

The appellant's representations refer to the record as including submissions from interested parties in a public debate over the future of the Centre. Furthermore, this public debate has received wide media attention. The appellant has attached a number of newspaper clippings regarding the public debate and other issues relating to the future of the Centre. The appellant submits that disclosure of the personal information in the record is important in order to subject the government of Ontario and its agencies to public scrutiny (section 21(2)(a)).

The appellant also argues that there was never a promise or even an indication that submissions given to the review team would be treated confidentially.

I acknowledge that the issues surrounding the Centre were widely publicized and that the actions of the government with respect to the future of the Centre merit public scrutiny. I also note that the appellant has received virtually everything the Ministry has regarding the review of the Centre. The only information remaining at issue concerns human resource matters within the Centre. The information was gathered as part of the overall review. However, this information

is not central to the public debate concerning the Centre. Rather, it pertains to an internal employee related matter. The approaches taken by management in dealing with this matter will be disclosed to the appellant as a result of this order. I find that section 21(2)(a) is not a relevant consideration with respect to the information remaining at issue.

I do find, however, that the information pertaining to the harassment allegations is highly sensitive and section 21(2)(f) is, therefore, relevant in the circumstances. Accordingly, I find that disclosure of the portions of the record which are **not** highlighted would constitute an unjustified invasion of personal privacy, and this information is properly exempt under section 21(1) of the Act.

ORDER:

1. I order the Ministry to disclose the portions of the record at issue **which are highlighted** in yellow on the copy of the record which is being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order by sending a copy of this severed record to the appellant on or before **March 20, 1996**.
2. I uphold the Ministry's decision to withhold the remaining information from disclosure.
3. The Ministry's search for records was reasonable and this part of the appeal is denied.
4. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.
5. If the Ministry is unable to comply with Provision 1 of this order due to the current OPSEU strike, I order the Ministry to contact me through the Registrar of Appeals by **March 15, 1996** so that I may then consider any required adjustment to the compliance date and respond accordingly with notice to all parties.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ February 29, 1996