



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1203

Appeal P-9600085

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 a copy of the “statement and claim” for compensation filed with the Board by a named individual. The requester was tried and convicted of certain criminal acts against this person and may be liable to reimburse the Board for any award made to her by the Board under the subrogation provisions of section 26(2) of the Compensation for Victims of Crime Act.

The Board located a four-page record responsive to the request and denied access to it under sections 21 and 49(b) of the Act (invasion of privacy). The requester (now the appellant) appealed the Board’s decision.

A Notice of Inquiry was provided to the Board, the appellant and to two other individuals whose interests may be affected by the disclosure of the information contained in the record (the affected persons). Representations were received from the appellant and the Board.

The Criminal Injuries Compensation Board is an institution for the purposes of the Act, whose head is the Attorney General of Ontario. The Ministry of the Attorney General has acted on the Board’s behalf in the processing of the request and the appeal, as well as in making submissions to this office.

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 record at issue and I find that it contains the personal information of the appellant and the affected persons.

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.

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 parts of Pages 2 and 4 of the record as this information relates to the medical/psychological history and treatment or evaluation of one of the affected persons. I have reviewed this information and find that it falls within the ambit of the presumption under section 21(3)(a). The Board also submits that the presumption in section 21(3)(f) applies to additional financial information contained in Page 2 of the record as it describes the income loss incurred by the affected persons. I find that this information falls within the ambit of the section 21(3)(f) presumption. Accordingly, the disclosure of the personal information relating to the medical history and financial affairs of the affected persons which is contained in Pages 2 and 4 of the record is presumed to constitute an unjustified invasion of the personal privacy of the affected persons.

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 the record which does not fall within one of the presumptions. The Board submits that the considerations listed in sections 21(2)(e) (the disclosure of the information will unfairly expose the individual to whom it relates to pecuniary or other harm) and 21(2)(f) (the information is highly sensitive) weigh against the disclosure of the personal information contained in these portions of the record, particularly the information which would serve to locate the affected persons. 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 a factor weighing in favour of the disclosure of the information contained in the record. I find that this factor is also significant and weighs in favour of the disclosure of the personal information found in these portions of the record.

The appellant further submits that the factor listed in section 21(2)(g) (the information is unlikely to be accurate or reliable) must be considered. This factor weighs in favour of privacy protection and is not, accordingly, available as a consideration favouring disclosure.

I have considered the representations of the parties and have carefully reviewed the record. Balancing the privacy interests of the affected persons 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. I am mindful, however, of the fact that the appellant is aware of the circumstances surrounding the crimes for which he was convicted, as well as the nature of the allegations made against him generally.

Weighing the privacy interests of the affected persons against the appellant's right of access, I find that the factors weighing in favour of privacy protection for the affected persons are more compelling than the factors favouring the appellant's right of access. Therefore, I find that the disclosure of the information which does not fall within the presumptions provided by sections 21(3)(a) and (f) would also result in an unjustified invasion of the personal privacy of the affected persons.

The appellant has not argued that any of the exceptions contained in section 21(4) apply to the information in this record or that there is a compelling public interest in its disclosure under section 23. I have also reviewed the record and find that there does not exist any compelling public interest in its disclosure. Accordingly, I find that the entire record is exempt from disclosure under section 49(b) of the Act.

ORDER:

I uphold the Board's decision

Original signed by: _____
Donald Hale
Inquiry Officer

_____ June 10, 1996