



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

ORDER P-1240

Appeal P-9600164

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a complete copy of the forensic sciences report prepared following the murder of a young girl. The requester was convicted of the girl's murder and is presently serving his sentence. The Ministry located the responsive records and denied access to parts of them, claiming the application of the invasion of privacy exemptions in the Act (sections 21 and 49(b)).

The requester, now the appellant, appealed the Ministry's decision. A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from the Ministry only.

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 information contained in the records and find that it contains personal information which relates to the appellant, the deceased and two other individuals.

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 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 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 Ministry 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 appellant submits that the disclosure of the forensic science reports would not result in an unjustified invasion of personal privacy as these records were submitted to the Court as exhibits at his trial and are, accordingly, public documents.

The Ministry submits that the information contained in the records falls within the presumptions in sections 21(3)(a) and (b). These sections state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

Following my review of the records and the submissions of the parties, I make the following findings:

1. The personal information contained in the records which was not disclosed to the appellant relates to the deceased's medical history and evaluation and is, therefore, subject to the presumption contained in section 21(3)(a).
2. The personal information contained in the records was also compiled and is identifiable as part of an investigation into a possible violation of law. This information is, accordingly, also subject to the presumption in section 21(3)(b).
3. Section 21(4) does not apply and the appellant has not raised the possible application of section 23.
4. The appellant's right to disclosure of exhibits in the context of the criminal proceedings against him cannot overcome a presumed unjustified invasion of the privacy rights of other individuals under sections 21(3)(a) and (b) of the Act.
5. The disclosure of the personal information contained in the records is presumed to constitute an unjustified invasion of the personal privacy of the deceased and two other individuals. It is, therefore, exempt from disclosure under section 49(b).

ORDER:

I uphold the Ministry's decision.

Original signed by: _____ July 31, 1996
Donald Hale
Inquiry Officer