



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

ORDER P-1224

Appeal P-9600141

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the requester's stay at the Child and Parent Resource Institute (CPRI) in London in 1976 and 1977, as well as the on-going treatment provided by it after the requester's discharge. The Ministry located a number of records responsive to the request and granted access to them, in whole or in part. Access to portions of the records was denied by the Ministry under the following exemptions contained in the Act:

- invasion of privacy - sections 21 and 49(b)

The requester, now the appellant, appealed the Ministry's decision to deny access to the undisclosed portions of the records and submits that additional records responsive to his request should exist. A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from the Ministry only.

The information remaining at issue consists of the undisclosed portions of Pages A-28, 21, 23, 26, 28-34, 36 and 39 and Pages 47-51 in their entirety.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act defines "personal information", in part, as recorded information relating to an identifiable individual. I have reviewed the undisclosed portions of the records and find that all of them contain information relating to the appellant and other identifiable individuals. While the names of the professional staff at the CPRI appear throughout the records, I find that this information does not qualify as their personal information as it refers to these individuals in their professional or employment capacities only.

DANGER TO MENTAL OR PHYSICAL HEALTH OF THE REQUESTER

The Ministry submits that the undisclosed information contained in Pages 28, 31 and 47-51 is exempt under section 49(d) of the Act. This section states:

A head may refuse to disclose to the individual to whom the information relates personal information,

that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual;

I have reviewed the undisclosed information contained in these records and find that I have not been provided with sufficient evidence to demonstrate that its disclosure to the appellant could reasonably be expected to prejudice either his mental or physical health. For this reason, I find that section 49(d) has no application to the undisclosed information in Pages 28, 31 or 47-51.

INVASION OF PRIVACY

In this appeal, the Ministry has raised the possible application of both “invasion of privacy” exemptions.

The section 21(1) exemption can only apply to records which do **not** contain the appellant’s personal information. As I have found that all the records for which this section has been claimed contain the appellant’s personal information, section 21(1) is not applicable (Order M-352).

However, 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 appellant access to that information. As noted, the records contain the personal information of the appellant and other individuals, and accordingly, I will consider whether section 49(b) applies.

In this situation, 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 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 submits that the undisclosed portions of Pages A-28, 21, 23, 26, 28-34, 36, 39 and 47-51 contain information which may be characterized as “highly sensitive” within the meaning of section 21(2)(f). In addition, it argues that the undisclosed portions of Pages A-28, 21, 23, 26, 30, 32-34, 36 and 39 contain information which was supplied to the Ministry in confidence (section 21(2)(h)). These are factors weighing in favour of privacy protection and the non-disclosure of the information to the appellant.

Pages 47-51 comprise a four-page document entitled “Psycho Social Diagnosis”. Much of the information contained in this record concerns only the appellant while other portions set forth the conclusions reached by a psychologist about the other family members.

I have reviewed the severed information contained in the records and agree that it may properly be described as “highly sensitive”. The appellant and his family were experiencing an extremely difficult and stressful period at the time of the appellant’s involvement with the CPRI. Much of the undisclosed information describes the problems the family was facing and how they attempted to cope with them. In particular, these records document the conflicts which existed between the appellant’s parents and with his siblings. I find that the highly sensitive nature of

the information in these records is a significant factor to be considered when balancing the appellant's right of access against the privacy interests of his parents and siblings.

I also find that while some of the information contained in the records may have been supplied to CPRI staff by the appellant's family in confidence, this is not a significant factor weighing in favour of privacy protection in the circumstances of this appeal.

It is clear from the appellant's letter of appeal and request to the Ministry that he is seeking information about what was a very troubled time in his life in order to work out in his own mind that happened to him and why. Access has been granted to a large number of records which, in my view, will assist the appellant to a great extent in better understanding the situation he found himself in.

Balancing an appellant's right to information about himself against the privacy rights of other individuals is often difficult and, in this appeal, it is especially so. I find that in the circumstances of this appeal, the protection of the privacy of other individuals outweighs the appellant's right of access to the undisclosed information contained in the records. For this reason, I find that the undisclosed information contained in the records, which pertains primarily to the appellant's family, qualifies for exemption from disclosure under section 49(b) of the Act. Section 21(4) has no application in the present circumstances and the appellant has not raised the possible application of section 23.

I find, however, that portions of Pages 47-51 pertain only to the appellant and ought to be disclosed to him. I have highlighted on the copy of Pages 47-51 which I have provided to the Ministry's Freedom of Information and Privacy Protection Co-ordinator those parts which are to be disclosed to the appellant.

REASONABLENESS OF SEARCH

The appellant maintains that additional records beyond those already disclosed to him should exist. During the inquiry stage of the appeal and following several telephone conversations with the appellant, the Ministry located and disclosed a number of additional records to him which relate not only to his residential stay at the CPRI but with his entire involvement with the facility.

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that such a record does not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

The Ministry has submitted an affidavit from the Manager of the Clinical Information Systems of the CPRI who conducted the search to locate responsive records. The affidavit indicates the areas where the search for records was undertaken and that "Ward Report Books", the daily journal for each living unit which were completed by residential care staff at the time of the appellant's stay at the facility, were destroyed in 1985 according to the CPRI records retention

schedule. The affiant also describes her conversations with the appellant and the efforts which she made to address the questions raised by the appellant.

I have considered the submissions of the parties and I find that the Ministry's search for records responsive to the appellant's request was reasonable in the circumstances of this appeal.

ORDER:

1. I uphold the Ministry's decision with regard to the undisclosed portions of the records with the exception of those portions of Pages 47 to 51 which I have highlighted on the copy provided to the Ministry's Freedom of Information and Privacy Protection Co-ordinator with a copy of this order.
2. I order the Ministry to disclose to the appellant the highlighted portions of Pages 47 to 51 by sending him a copy by **August 16, 1996** but not before **August 12, 1996**.
3. In order to verify compliance with this order, I reserve the right to order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

Donald Hale
Inquiry Officer

July 12, 1996