



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

ORDER P-1373

Appeal P_9700004

Ministry of the Solicitor General and Correctional Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for a copy of information provided to the appellant's probation officer, relating to allegations that the appellant was blackmailing someone, and that he had been on his wife's property.

The Ministry granted partial access to the responsive records and claimed the following exemption to deny access to the remainder of the records:

- invasion of privacy - section 49(b).

The appellant appealed this decision. The record at issue in this appeal is the information severed from two pages, numbered 12 and 13, of a "Record of Case Supervision". Partial access was granted to page 12 and access was denied in full to page 13.

This office sent a Notice of Inquiry to the appellant, the Ministry and an individual referred to in the record (the affected person). Representations were received from the Ministry and the affected person.

The appellant did not submit representations in response to the Notice of Inquiry, but requested that I refer to the information he provided to this office during the course of the appeal. I have considered this information in reaching my decision concerning this appeal.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

Having reviewed the record it is my view that it contains the personal information of the appellant, the affected person and other identifiable individuals.

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 requester access to that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether 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 argues that the personal information would unfairly expose the affected person to pecuniary or other harm (section 21(2)(e)), that the information is highly sensitive (section 21(2)(f)), and that it was supplied by the affected person in confidence (section 21(2)(h)). The affected person requests that the record not be disclosed.

The appellant's submissions raise the possible application of section 21(2)(d) of the Act (disclosure of the record is relevant to a fair determination of his rights). The appellant also disputes the accuracy of the allegations referred to in his request.

Having reviewed the representations and the record, I have made the following findings:

- (1) I am satisfied that disclosure of portions of the information severed from the bottom of Page 12 and the first six and one-half lines of Page 13 would unfairly expose the affected person to pecuniary or other harm and, therefore, section 21(2)(e) is a relevant consideration in favour of non-disclosure of this information. I have not been provided with any substantial basis for the assertions that disclosure of the remainder of the record at issue would expose the affected person unfairly to pecuniary or other harm and, therefore, section 21(2)(e) is not a relevant consideration for this information.
- (2) I find that section 21(2)(f) is a relevant consideration for the same information for which I have found section 21(2)(e) a relevant consideration in the preceding paragraph.
- (3) It is my view that section 21(2)(h) is also relevant to some of the information for which I have found sections 21(2)(e) and (f) to be relevant, above. For the remaining information at issue, I find that this section is not a relevant consideration in the circumstances of this appeal. The affected person states that the information was brought to the attention of the appellant's probation officer asking her to pass on the information to the appellant. In addition, the record at issue also contains similar requests directed by the affected person to the probation officer.
- (4) Finally, it is also my view that disclosure of the record at issue is **not** relevant to a fair determination of the appellant's rights. No legal right has been identified and, therefore, section 21(2)(d) is not a relevant consideration in the circumstances of this appeal.

Having considered all of the circumstances of this appeal and balanced the appellant's right to access his personal information against the interests of the affected person in protecting personal privacy, I find that disclosure of the parts of the record which are highlighted on the copy of the record being sent to Ministry's Freedom of Information and Privacy Co-ordinator with a copy of

this order would be an unjustified invasion of the personal privacy of the affected person and other individuals, and this information is therefore exempt under section 49(b).

I also find that disclosure of the parts of the record which are **not** highlighted on the copy of the record being sent to Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order would **not** constitute an unjustified invasion of the personal privacy of any individual, and therefore, section 49(b) does not apply to this information, which should be disclosed to the appellant.

ORDER:

1. I uphold the Ministry's decision not to disclose the parts of the record which are highlighted 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.
2. I order the Ministry to disclose to the appellant the parts of the record at issue which are not highlighted 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 the record to the appellant by **May 1, 1997** but not before **April 25, 1997**. The highlighted parts of the record are **not** to be disclosed.
3. 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 2.

Original signed by: _____
John Higgins
Inquiry Officer

_____ March 27, 1997