



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1569

Appeal P-9700358

Ministry of Consumer and Commercial Relations



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BACKGROUND:

The appellant brought a complaint against a hair care centre (the centre) and in particular, against the proprietor of the centre (the affected person) to the Consumer Services Bureau (the Bureau) of the Ministry of Consumer and Commercial Relations (the Ministry). The complaint concerned the appellant's dissatisfaction with the price and service regarding the purchase of a wig.

The affected person responded to inquiries by the Ministry and provided a number of testimonials and magazine articles to assist the Ministry in resolving the consumer complaint.

NATURE OF THE APPEAL:

The appellant became aware of these documents and submitted a request to the Ministry under the Freedom of Information and Protection of Privacy Act (the Act). Specifically, the request was for "[t]estimonials from medical community, customers and magazine articles". The Ministry located the responsive records and advised the appellant of the location of the magazine articles. The Ministry notified the affected person to seek her views regarding disclosure of the remaining records. The affected party did not consent to disclosure of the records.

The Ministry subsequently issued a decision to the appellant in which it denied access to the requested records pursuant to section 17(1) (third party information) of the Act. The appellant appealed this decision.

This office provided a Notice of Inquiry to the appellant, the Ministry and the affected person. Because the records appeared to contain the personal information of the affected person the Notice also raised the possible application of section 21(1) (invasion of privacy) of the Act. Representations were received from all three parties.

The records consist of 10 testimonial letters dated between November 27, 1990 and January 7, 1994. Six of the letters are from the medical community and four letters are from customers. The testimonials relate to the work performed by the affected person in providing wigs for customers suffering from certain medical conditions. The magazine articles are not at issue in this appeal.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The appellant indicates that she is not interested in receiving the personal identifiers of customers of the affected person. Accordingly, this information is not at issue.

I have reviewed the records. As I indicated above, they consist of letters from customers and the medical community. Some of the letters are addressed "to whom it may concern", some are

addressed to doctors and some are addressed to the affected person at her place of employment. These letters contain the personal opinions or views of the authors regarding the competence and the quality of care and service received from the affected person. I find that the information in these records relates to the affected person. In particular, I find that the comments in these letters regarding the affected person are of a most personal nature. None of the information in the records relates to the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception 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 result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies, the only way such a presumption 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.

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 which are relevant in the case.

The Ministry advises that the affected person voluntarily submitted the letters to the Ministry in confidence (section 21(2)(h)) in order to address the appellant's complaint, and in aid of the Bureau's resolution of the complaint. The Ministry also claims that the testimonials are effectively personal recommendations or evaluations, character references or personnel evaluations within the meaning of section 21(3)(g) of the Act.

The affected person submits that the information in the records is highly sensitive (section 21(2)(f)) and that it was supplied to the Ministry in confidence. She also submits that the contents of the letters express the authors' views regarding her competence. She believes that disclosing the information in the letters to the appellant would be used by her in an attempt to harm her reputation (section 21(2)(i)).

The appellant argues that commendations, by their very nature, encourage dissemination. She refers to the contents of a letter which she sent to this office outlining her complaint regarding the appellant's service and competence. Finally, she makes reference to the fact that the hair care centre is the recipient of a government grant.

I have considered the representations of the parties. In my view, the records clearly reflect the authors' recommendations concerning the affected person. Therefore, I find that the presumption in section 21(3)(g) applies to the records. The affected person may, if she chooses disseminate the contents of these records as she sees fit, however, in these circumstances, she objects to their disclosure. I am satisfied that the affected party submitted the records in question to the Ministry with an expectation that they would be treated confidentially (section 21(2)(h)).

As they concern other individuals' views regarding her competence, attitude and integrity, I consider them to be highly sensitive (section 21(2)(f)).

As disclosure of the records would constitute a presumed unjustified invasion of personal privacy, they are properly exempt under section 21(1).

Because of these findings, it is not necessary for me to consider the application of section 17(1) to the records.

ORDER:

I uphold the Ministry's decision to withhold the records from disclosure.

Original signed by: _____

_____ May 26, 1998

Laurel Cropley

Adjudicator

(formerly Inquiry Officer)