



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

ORDER PO-1731

Appeal PA-990168-1

Ministry of Community and Social Services



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BACKGROUND:

In 1997, the Adoption Unit of the Ministry of Community and Social Services (the Ministry) received an Adoption Home Study Report from a social worker approved by the Ministry to conduct private adoption home studies. The social worker recommended the appellants as suitable adoptive parents to adopt a child from Russia. Shortly thereafter, the Ministry received telephone calls from two concerned individuals (the affected persons) regarding the suitability of one of the appellants as an adoptive parent. As a result, the Ministry asked the social worker to investigate the concerns and further assess this appellant's suitability as an adoptive applicant. During his investigation, the social worker advised the appellants that information had been received from "the anonymous callers". Following further assessment by the social worker, he continued to recommend the appellants as suitable adoptive parents. The Ministry subsequently accepted the recommendation and approved the appellants as suitable adoptive applicants.

NATURE OF THE APPEAL:

The appellants submitted a request to the Ministry under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of their adoption file, including "all information, names and addresses and the addendum and letters [to one Ministry employee from the social worker]".

The Ministry located responsive records and denied access to them in their entirety on the basis of sections 21(1)(f) and 49(b) (invasion of privacy) of the Act.

The appellants appealed the decision to deny access.

During mediation the Ministry was provided with consents to disclosure from two individuals (other than the affected persons) who were referred to in the records. As a result, the Ministry reviewed its decision and issued a revised decision letter. This decision was issued within the 35 day limit for the addition of new discretionary exemptions by the Ministry (as set out in the Confirmation of Appeal).

The Ministry granted access in full to pages 1, 5, 9-17 and 21. Partial access was granted to pages 2, 6, 7, 8, 22 and 23. The Ministry denied access to pages 3, 4, 11, 18, 19 and 20 in their entirety. The Ministry indicated that it continues to rely on the application of section 21(1)(f) of the Act to withhold access to the records in whole or in part, and added sections 14(2)(a) (law enforcement) and 13(1) (advice or recommendations) of the Act as additional bases for exempting pages 3, 4 and 11 from disclosure. The Ministry issued a subsequent letter indicating that it continues to rely on section 49(b) (which it apparently neglected to reference in its revised decision).

During subsequent mediation, the appellants confirmed that they are not pursuing access to pages 3, 4 and 11. Therefore, access to these records is not an issue. Accordingly, the application of sections 14(2)(a) and 13(1) which the Ministry had claimed in respect of these records is also not at issue.

I sent a Notice of Inquiry to the appellants and the Ministry. Representations were received from both parties.

RECORDS:

The records at issue (pages 2, 6, 7, 8, 22 and 23 in part and pages 18, 19 and 20 in full) consist of correspondence, notes and an International File Information Sheet.

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, and includes,

- (e) the personal opinions or views of the individual except where they relate to another individual,
...
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

The records contain information relating to concerns raised by the affected persons about the appellants. As such they contain the views and opinions of these individuals as they relate to the appellants and this qualifies as the appellants' personal information pursuant to paragraph 2(1)(g).

The records also contain the results of the investigation conducted by the social worker and assessments by the Ministry relating to the appellants' suitability as adoptive applicants. I find that this information qualifies as "recorded information about" the appellants, as well as a number of other individuals referred to in the records.

In my view, in the context of an investigation into the appellants' suitability as adoptive parents, the fact that the affected persons have provided information in relation to this assessment qualifies as their personal information, even though, as in this case, the information was not originally requested by the Ministry. Moreover, I find that in this context, it would be possible for the appellants to identify them even if their names were removed from the records.

Consequently, I find that, with one exception, the records contain the personal information of both the affected persons and the appellants.

Record 20 is a note from one Ministry employee to another employee relating to the appellants' application. Although a small portion of this record contains information about the affected persons, this information is

severable. Once removed, the remaining portions of this record do not contain any information which is about the affected persons, or which would serve to identify them. I find that the remaining portions contain only the appellants' personal information. As neither section 21(1) nor section 49(b) can apply to information pertaining only to the appellants, this information should be disclosed to them. I have highlighted in yellow on the copy of this record which is being sent to the Ministry's Freedom of Information and Privacy Co-ordinator, the portion which contains the affected persons' personal information. I will consider whether section 49(b) applies to the highlighted portion of this record.

The appellants have already received a large amount of the information in the records. The portions which have been withheld relate to both the affected persons and the appellants.

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 the personal information of both the appellants and another individual 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 appellants access to that information. In this situation, the appellants are not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of personal privacy of another person. Since the appellants have a right of access to their own personal information, the only situation under section 49(b) in which they can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

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 in section 21(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act 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), as well as all other considerations that are relevant in the circumstances of the case.

The Ministry submits that the presumption in section 21(3)(g) and the factors in sections 21(2)(e),(f), (g) and (h) are applicable in the circumstances of this appeal. These sections provide:

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
 - (f) the personal information is highly sensitive;
 - (g) the personal information is unlikely to be accurate or reliable;
 - (h) the personal information has been supplied by the individual to whom the information relates in confidence;
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations.

Section 21(2)

The Ministry's position

With respect to the factors in section 21(2), the Ministry states that the calls it received from the affected persons were unsolicited, and that both affected persons requested, and were given, assurances of confidentiality prior to expressing their concerns to the Ministry and/or to the social worker. The Ministry discusses in some detail the sensitivities relating to the information at issue and the harms it believes may result from disclosure of the information at issue, however, to provide details in this order would serve to identify the affected persons. The Ministry alludes to the questionable accuracy of the information provided to it by the affected persons, and indeed, the portions of the records which have been disclosed to the appellants reflect the Ministry's view in this regard. The Ministry states, however, that:

[w]hile it is difficult to substantiate the allegations in this case, it is incumbent upon the Ministry to conduct as thorough an investigation as possible, and without the assurances of confidentiality, an open response from the concerned individuals in the community would not be possible.

The Ministry concludes that it appreciates the appellants' concerns regarding the allegations being made about them since this information could have resulted in the denial of their application to be approved as adoptive parents. However, the Ministry indicates that on assessing the information it had regarding the appellants, it accepted the social worker's recommendation and approved the appellants as suitable adoptive applicants. It appears that the appellants have now adopted an infant son.

The appellants' position

The appellants believe that they know the identity of the affected persons and their representations focus on their relationship with these individuals. They agree that the information is highly sensitive, but state that they already know what the information is. They submit that because the information is inaccurate, they should be able to see it. They submit further that the individual they suspect of being one of the callers has already indicated to them that he made the allegations against them.

The appellants state:

We do not believe that the release of our complete file is at all unjustifiable. We can only repeat that our family is threatened by the actions of these people. We are already aware of the greater part of these allegations, we know exactly who made them, their relationship to us and to each other etc.

The appellants indicate that, in seeking this information, they are "only seeking closure and a sense of security".

Findings

It is apparent from the records themselves that the accuracy and/or reliability of the information provided by the affected persons was questionable and/or incapable of being verified. Therefore, I find that the factor in section 21(2)(g) is relevant in the circumstances of this appeal. Previous orders of this office have generally held that the likelihood that information is inaccurate or unreliable is a factor which weighs against disclosure.

However, in this case, I found that the comments made about the appellants by the affected persons qualifies as the personal information of the appellants. In this context, I find that the fact that the information may be inaccurate or unreliable weighs in favour of disclosure.

Further, if that inaccurate information is used against the interests of the appellants, in my view, fairness would require that the appellant be apprised of the nature of the information. Fairness in the Ministry's application process is a relevant circumstance weighing in favour of disclosure.

In a similar vein, I accept that the ability to know and understand the nature of any comments made to a government organization about an individual by another individual is a relevant consideration weighing in favour of disclosure. In my view, the significance of this consideration is reflected in the definition of personal information in sections 2(1)(e) and (g), which state:

"personal information" means recorded information about an identifiable individual, including,

- (e) the personal opinions or views of the individual except where they relate to another individual,

...

- (g) the views or opinions of another individual about the individual.

However, I note that the appellants have already received a significant amount of information and are clearly aware of the nature of the allegations which have been made. Consequently, I find that "fairness" has very little weight in the overall determination of this issue. Moreover, I find that the significance of the consideration relating to the appellants' ability to know the nature of the comments and the fact that the information may be inaccurate or unreliable have less weight as they were already made aware of the nature of the concerns through the investigation process itself and as a result of the information they have already received.

I am satisfied that in the context in which the affected persons' concerns were expressed, this information, by its nature, is highly sensitive. I also accept that the affected persons actively sought confidentiality from the Ministry and the social worker prior to expressing their concerns and that, as a result of the actions of the Ministry and the social worker, they had a reasonable expectation that their personal information would be held in confidence. Therefore, I find that the factors in sections 21(2)(f) and (h) are relevant in the circumstances of this appeal.

In Order P-1436, I commented on the significance of confidentiality in the adoption home study process:

I find that, in order to protect the interests of children to be placed in prospective adoptive families, the process of assessing the home environment must provide for a degree of confidentiality for individuals providing references pertaining to the prospective adoptive parents.

In my view, regardless of the fact that the affected persons' comments were unsolicited and not originally intended to be a part of the home study process, they are directly related to the Ministry's obligation to assess the home environment. The Ministry maintains, and I agree, that there must also be a degree of confidentiality in the current case, in order to ensure the integrity of the adoption application process and the Ministry's ability to respond responsibly and effectively to community concerns, and ultimately for the protection of adoptive children.

In the balance, I find that the combined factors weighing in favour of privacy protection, and in particular section 21(2)(h), significantly outweigh the appellants' interests in disclosure of the information at issue.

Section 49(b) is a discretionary exemption. In reviewing the Ministry's balancing of the competing interests in this appeal, I see no reason to disturb its exercise of discretion. Therefore, I find that the information at issue in this appeal is exempt under section 49(b) of the Act.

Because of the findings I have made, it is not necessary for me to consider the application of section 21(3)(g).

ORDER:

1. I order the Ministry to disclose Record 20 in accordance with the highlighted copy of this record which I have attached to the Ministry's copy of this order by providing the appellants with a copy of the severed record on or before December 17, 1999. The highlighted information should not be disclosed to the appellants.
2. I uphold the Ministry's decision to withhold the remaining information in the records.
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 material disclosed to the appellant pursuant to Provision 1.

Original signed by _____
Laurel Cropley
Adjudicator

_____ November 19, 1999