



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

# ORDER PO-1733

Appeal PA-990147-1

Ministry of Health



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## **NATURE OF THE APPEAL:**

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Health (the Ministry). The request was for access to a copy of all information submitted to the Ministry relating to two investigations into the death of her mother who had been a resident of a long term care facility. The appellant confirmed to the Ministry that the request was not being made under section 66(a) of the Act, because the information was not required for the administration of her mother's estate.

The Ministry provided the appellant with partial access to the two investigation reports. The Ministry indicated that her mother's medical information and personal employment history relating to staff at the facility had been severed from the records under section 21 of the Act (invasion of privacy).

The appellant appealed the Ministry's decision.

A Notice of Inquiry was sent to the Ministry and the appellant. Although the Ministry's decision only refers to section 21 of the Act, because the records may contain the personal information of the appellant as well, I included section 49(b) as an issue in this notice.

## **RECORDS:**

The records at issue are two investigation reports prepared by Compliance Advisors in the Ministry's Long Term Care Division. The first is dated December 22, 1997, and is 18 pages long. The second is dated October 20, 1998 and is 4 pages long.

## **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. Having reviewed the information in the records, I am satisfied that it all relates to the care provided to the appellant's mother while she was in the facility. The information is, therefore, about the appellant's mother and qualifies as her personal information.

Section 2(2) of the Act says:

Personal information does not include information about an individual who has been dead for more than thirty years. 1987, c. 25, s. 2(2).

This section has no application in this appeal as the appellant's mother's death occurred less than thirty years ago.

Because the appellant was the complainant in the matter, there is also information in parts of the reports about the nature of her concerns and information she provided to the investigators. This information is about the appellant and her mother and, therefore, qualifies as the personal information of both of these individuals.

Although the Ministry initially claimed that the records also contain the personal information of staff at the facility, it has not made submissions in this respect. Given that the complaints made by the appellant were not directed at a particular individual and that the investigations do not address the conduct of any identifiable individual or individuals at the facility, I find that the record does not contain the personal information of any other individuals.

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 appellant and another individual and the institution determines that the disclosure of the information would constitute an unjustified invasion of the other individual's personal privacy, the Ministry has the discretion to deny the requester access to that information.

In this situation, sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The Ministry submits that sections 21(3)(a) and (b) apply in the circumstances of this appeal. 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;

Because of the nature of the appellant's complaint, much of the information in the record concerns the medical history, diagnosis, condition and treatment of her mother. This is precisely the type of information described in section 21(3)(a), and this presumption applies.

With respect to section 21(3)(b), the Ministry submits that pursuant to section 26 of the Nursing Homes Act (the NHA), the Ministry is required to investigate complaints concerning the care of a resident in a nursing home. If, as a result of the complaint, it is determined that the licensee (the facility) is in contravention of the NHA, the Ministry may revoke or refuse to renew the licence (section 13 of the NHA). In such circumstances, the licensee is entitled to a hearing before the Health Services Appeal and Review Board (section 15 of the NHA). There is a further right of appeal from the Health Services Appeal and Review Board to the Divisional Court (section 17 of the NHA).

I have reviewed the relevant provisions of the NHA and I am satisfied that the information in the investigation reports which the appellant is seeking access to was compiled and is identifiable as part of an investigation into a possible violation of law, and section 21(3)(b) applies.

The appellant, in her representations, presents an impassioned account of incidents during her mother's stay at the facility and the circumstances which she believes led to her mother's death. She also presented documentation related to her ongoing efforts to obtain information related to her mother's care and her concerns about the manner in which her complaints have been investigated.

Despite my sympathy for her situation, as mentioned above the Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2). In the circumstances of this appeal, the application of two presumptions has been established. Since none of the factors in section 21(4) are present, the exemption in section 49(b) applies.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_  
November 26, 1999