



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1735

Appeal PA-990222-1

Ministry of Health



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NATURE OF THE APPEAL:

The appellants submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General and Correctional Services for access to a specific ambulance report concerning their deceased daughter. The Ministry of the Solicitor General and Correctional Services transferred the request to the Ministry of Health (now the Ministry of Health and Long-Term Care) (the Ministry) under section 25(1) of the Act, since the record was determined to be in the Ministry's custody.

The Ministry denied access to the record pursuant to section 21(1) (unjustified invasion of personal privacy) of the Act. The Ministry also stated that disclosure of the record was presumed to be an unjustified invasion of the daughter's personal privacy under section 21(3)(a) (medical information).

The appellants appealed the Ministry's decision.

During the mediation stage of the appeal, the Ministry stated that it was also relying on the factor weighing against disclosure in section 21(2)(f) (highly sensitive information).

I sent a Notice of Inquiry setting out the issues in the appeal to the appellants and the Ministry. I received representations from both parties.

RECORD:

The record at issue is a two page Ambulance Call Report, a form with handwritten information filled out by an ambulance driver and an ambulance attendant. The record contains seven general sections described as follows:

1. Ambulance Administration
2. Patient Identification
3. Clinical Information
4. Hospital Administration
5. Remarks and/or procedures continued
6. Final Assessment by Crew
7. General Administration

DISCUSSION:

PERSONAL INFORMATION

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

The record contains information about the appellants’ daughter, including detailed information about her physical and medical condition as observed by the ambulance crew. As a result, information in the record qualifies as personal information under the definition of that term in section 2(1) of the Act, subject to any finding I may make under section 2(2). That section reads:

Personal information does not include information about an individual who has been dead for more than thirty years.

The daughter has been deceased for less than thirty years, and thus the information in the record qualifies as the daughter’s personal information.

INVASION OF PRIVACY

Introduction

Where a requester seeks personal information of other individuals, section 21(1) of the Act prohibits an institution from disclosing this information unless disclosure would not constitute an unjustified invasion of the personal privacy of these individuals.

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 institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which 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].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the Act or if a finding is made under section 23 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption.

Relevant Provisions

In this case, the only exception to the section 21(1) exemption which could apply is section 21(1)(f). The Ministry has cited the presumption of an unjustified invasion of privacy at 21(3)(a) to support its position

that section 21(1)(f) does not apply, as well as the factor weighing against disclosure in section 21(2)(f). Those sections read:

(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

(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,

(f) the personal information is highly sensitive;

(3) 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;

Representations

The Ministry provides detailed representations in support of the application of the above sections. In the circumstances, it is difficult for me to reproduce or summarize most of this material, without disclosing information which may be confidential.

The appellants provide no specific representations on these sections, although they indicate that they are in possession of a great deal of medical information concerning their daughter, including an autopsy report and coroner's reports. The appellants also indicate that they seek disclosure of the record in order to "come to terms with" their daughter's death. Finally, the appellants state that the coroner has no objection to the Ministry providing the record to the appellants.

Presumption at section 21(3)(a)

In my view, much of the information in the "Clinical Information", "Hospital Administration" and "Final Assessment by Crew" categories, and some of the information in the "Ambulance Administration" category, qualifies as information relating to the daughter's medical diagnosis, condition or evaluation, and therefore this information falls within the section 21(3)(a) presumption of an unjustified invasion of personal privacy. Since none of the section 21(4) factors applies in the circumstances, this information is exempt under section 21(1) of the Act.

Factors under section 21(2)

Much of the remaining information which does not fall within section 21(3)(a), as contained in the “Clinical Information” and “Remarks and/or procedures continued” categories, is highly sensitive in the circumstances, within the meaning of section 21(2)(f).

The appellants have not cited any factors listed in section 21(2) which might weigh in favour of disclosure. In Order PO-1715, Assistant Commissioner Mitchinson relied on an unlisted factor weighing in favour of disclosure, described as “diminished privacy interest after death”:

The factors listed in section 21(2) of the Act are not exhaustive. Unlisted factors may also be relevant, depending on the particular circumstances of an appeal. One such factor that has been recognized in past orders is a diminished privacy interest after death (Order M-50). The appellant identifies this as a factor favouring disclosure in the present appeal.

I agree with the statement made by former Commissioner Tom Wright in Order M-50, that:

The disclosure of personal information which might have constituted an unjustified invasion of personal privacy while a person was alive, may, in certain circumstances, not constitute an unjustified invasion of [personal] privacy if the person is deceased.

A decision to consider this factor, and the assessment of the weight to be given to it in a particular appeal, must be made in the context of section 2(2). In that section, the legislature makes it clear that information about an individual remains his or her personal information until thirty years after death, signalling a broad and strong intention to protect the privacy rights of deceased persons.

The deceased son in this case has been dead for a relatively short period of time. The information contained in the records is almost exclusively related to the son, and much of it is sensitive in nature. Had the son survived the accident, it is highly unlikely that his personal information would have been accessible under the Act by others, including his family members, without consent. In these circumstances, although relevant, I would give little weight to this factor.

In this case, the deceased also has been dead for a relatively short period of time. In the circumstances, I find that the “diminished privacy interest after death” factor is relevant, and carries moderate weight.

Also in Order PO-1715, the Assistant Commissioner stated:

The NPC’s representations quoted earlier in this order express the view that “the family in this case stands in no better position than a newspaper”. I agree that this is an accurate statement in the context of determining whose personal information is contained in the [IPC Order PO-1735/November 30, 1999]

records. However, in my view, the fact that the appellant represents the family members of the deceased son, and not a newspaper, is a relevant unlisted factor when considering whether disclosure would constitute an unjustified invasion of privacy. The weight accorded to this factor varies according to circumstances, and in the circumstances of the present appeal I would give it moderate weight.

Similarly, I find that the fact that the appellants are the parents of the deceased is a factor weighing moderately in favour of disclosure.

Although I found two unlisted factors weighing moderately in favour of disclosure (“diminished privacy interest after death” and the fact that the appellants are family members of the deceased), I find in the circumstances that the highly sensitive nature of most of the information not falling within the section 21(3)(a) presumption carries equal weight. Section 21(1)(f) applies only if disclosure would **not** constitute an unjustified invasion of privacy. Since the factors favouring disclosure do not outweigh the factor favouring privacy, section 21(1)(f) does not apply. Therefore, I find that this information is exempt under section 21(1) of the Act.

Severance

Where a record contains exempt information, section 10(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information. A head will not be required to sever the record and disclose portions where to do so would reveal only “disconnected snippets”, or “worthless”, “meaningless” or “misleading” information. Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed [Order PO-1663, Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner) (1997), 102 O.A.C. 71 (Div. Ct.)].

It is arguable that some of the information contained in the record at issue in this appeal is not, taken in isolation, exempt under section 21. However, in my view, the record cannot reasonably be severed, since to do so would reveal only “disconnected snippets”, or “worthless”, “meaningless” or “misleading” information, especially in light of the nature of the appellants’ request. Examples include information of an administrative nature such as the type of warning system the ambulance crew used, and the ambulance crew numbers. As a result, I uphold the Ministry’s decision not to sever information from the record for the purpose of disclosing it to the appellants.

ORDER

I uphold the Ministry’s decision to deny access to the requested record on the basis of section 21(1) of the Act.

Original signed by
David Goodis
Senior Adjudicator

November 30, 1999