



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2080

Appeal PA-010352-1

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of the Solicitor General (now the Ministry of Public Safety and Security, the Ministry), under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to certain information from the Office of the Chief Coroner and, in particular, certain information in connection with an investigation into the death of a named individual, his common law spouse.

The Ministry notified a number of affected parties and, in its subsequent decision, granted access to some of the information sought while denying access to parts of the information, relying on various exemptions contained in the *Act*. The requester, now the appellant, appealed the Ministry's decision.

During the mediation stage of the appeal, the Ministry issued several subsequent decision letters granting access to a considerable number of the records sought. As a result of this extensive mediation, the records remaining at issue consist of a one-page record in its entirety, and the undisclosed portions of ten other pages. The other responsive records were either disclosed or removed from the scope of the appeal by the appellant.

In refusing access to the remaining information at issue, the Ministry relies on the discretionary exemption in section 49(b) of the *Act*, having regard to the factors in sections 21(2)(f) (highly sensitive) and 21(2)(h) (supplied in confidence), and the presumptions in sections 21(3)(a) (medical and other history etc.), 21(3)(b) (law enforcement investigation) and 21(3)(f) (finances, income etc.).

This office initially provided the Ministry and four affected persons with copies of a Notice of Inquiry. As these parties were resisting the disclosure of the records, they bear the onus of establishing the application of the exemptions claimed. The Commissioner's office also determined that the mandatory exemption in section 21(1) (unjustified invasion of personal privacy) may be applicable to some of the records, and reference to this exemption was included in the Notice provided to the Ministry and the affected parties.

The Ministry and two of the affected parties made submissions in response to the Notice. The representations of the Ministry were shared, in their entirety, with the appellant. The Ministry subsequently released the remaining undisclosed information in Records 269, 352, 360 and 363, upon receiving the consent of one of the affected parties. These records are, accordingly, no longer at issue in this appeal.

The Ministry submits that the contents of Records 262 to 264, consisting of handwritten summaries of positions taken by various organizations and a member of the Provincial Parliament in correspondence to the Chief Coroner, were removed from the scope of the appeal during the mediation stage of the process. In the Notice of Inquiry provided to the appellant, he was asked to provide me with his views on whether this information remains at issue in the current appeal. The appellant indicated his wish to have the Records 262 to 264 remain at issue in the appeal. He also provided representations which were then shared, in their entirety, with the Ministry. Reply representations were also submitted by the Ministry.

RECORDS:

The record to which access has been denied in its entirety (page 316) is an ambulance report, documenting the actions taken by emergency personnel in response to a call.

Pages 262 to 264 of the records consist of handwritten notes summarizing positions taken in correspondence sent to the Chief Coroner by various organizations and individuals. The information severed from these pages relates to nine organizations and one individual who is a member of the Provincial Parliament.

Pages 272 to 273 consist of a Homicide and Sudden Death Report and Supplementary Report prepared by the Toronto Police Service. The information severed from these pages consists of certain details about the deceased, the appellant and one other individual.

Page 337 consists of handwritten notes. The severed portions identify three individuals and provide some information about two of them, such as professional addresses, telephone numbers and fax numbers.

DISCUSSION:

PRELIMINARY ISSUE

Are Pages 262 to 264 reasonably responsive to the request?

The Ministry argues that the undisclosed portions of Records 262 to 264, described in the Notice of Inquiry as “handwritten notes summarizing positions taken in correspondence sent to the Chief Coroner by various organizations and individuals . . .”, is not responsive to the narrowed request as framed following the mediation of the appeal. It suggests that “all of the undisclosed information contained on these pages arises from and is directly related to correspondence that was removed from the scope of the appeal during the mediation process.” The Ministry goes on to submit that “in view of the fact that the source documents have been removed from the scope of the appeal and are not at issue, the related undisclosed information on pages 262 to 264 is no longer reasonably relevant in the circumstances of the appeal.”

The appellant disagrees, submitting that “it is unreasonable to suggest that the documents should be withheld because the source documents have been withheld, when the majority of the content on pages 262 to 264 has been already released.”

In my view, the appellant has made it clear that he wishes to proceed with his appeal of the Ministry’s decision to deny access to the remaining portions of Records 262 to 264, regardless of his decision in mediation not to pursue the source documents which are summarized on these pages. I find that the information is responsive to the request and I will proceed to determine whether the exemptions claimed for them apply.

PERSONAL INFORMATION

The term “personal information” is defined, in part, in section 2(1) of the *Act* to mean “recorded information about an identifiable individual”. Only information which qualifies as personal information can be subject to the invasion of privacy exemptions in sections 21(1) and 49(b).

Representations of the Parties with Respect to Section 2(1)

The Ministry takes the position that all of the undisclosed information contained in the records remaining at issue qualifies as “personal information” within the meaning of section 2(1). The Ministry concedes that the information in pages 262 to 264 relates to certain organizations and that “[S]uch information does not usually constitute personal information as defined under the *FIPPA*.” It also indicates that the records contain references to individuals in their professional, as opposed to their personal capacities. However, the Ministry states that it sought the views of these individuals and accepts their position that the information constitutes their personal information.

The appellant submits that pages 262 to 264 contain information provided by nine organizations and by one member of the Provincial Parliament and that the records reflect “organizational positions and not personal opinions.” Further, the appellant indicates that the disclosed information contained in pages 262 to 264 demonstrates that “there is nothing particularly private about the summaries” which remain undisclosed.

With respect to those portions of pages 272 and 273 which remain at issue, as well as page 316 in its entirety, the appellant submits that as the deceased’s common law spouse, he is aware of her medical condition and the events surrounding her death.

Finally, the appellant argues that the undisclosed information in Record 337 consists of the names and business address and telephone numbers of various health care professionals. He submits that because the information relates to these individual’s businesses as opposed to their home addresses and telephone numbers this information does not constitute their personal information.

Findings

Pages 262 and 264 set out a brief description of the comments made by nine organizations and one member of the Provincial Parliament to the Deputy Coroner who investigated the circumstances surrounding the death of the appellant’s common law spouse. I find that the positions outlined by the nine organizations do not constitute “personal information” for the purposes of section 2(1). The comments of these organizations cannot be attributed to or identified with any individuals, only with the named organizations. As only personal information can be exempt from disclosure under sections 21(1) and 49(b), and these are the only exemptions claimed to apply to this information, I find that it does not fall within the ambit of either of the invasion of privacy exemptions.

I also find that the comments attributed to the member of the Provincial Parliament were made in his professional capacity and, examining their content, cannot be considered to represent his personal views. I find that this information also fails to meet the definition of personal information within the meaning of section 2(1) and cannot, therefore, qualify for exemption under sections 21(1) or 49(b).

The portions of pages 272 and 273 remaining at issue contain the personal information of the deceased person, including her sex, race, age, date of birth and information relating to her medical condition and history immediately prior to her death. I find that all of this information falls within the ambit of the definition of "personal information" in section 2(1) as it represents recorded information about an identifiable individual. Pages 272 and 273 also contain the personal information of the appellant. These portions of pages 272 and 273 were either disclosed to him or have been removed from the scope of the appeal. Page 273 also contains the personal information of another identifiable individual as it refers to this person by name and describes his actions.

Page 316 is an ambulance report prepared by the emergency service workers who attended the deceased. I find that it contains information relating to the deceased person's medical history, thereby qualifying as personal information for the purposes of section 2(1). Page 316 also identifies and contains references to the actions of the appellant and another individual, thereby qualifying as the personal information of these individuals as well.

Page 337 includes the names, business addresses and business telephone and FAX numbers of several physicians. I find that this information does not qualify as the personal information of these individuals as it does not relate to them in their personal capacities. Rather, the information pertains to them only in their professional capacities. As such, I find that it does not qualify as personal information within the meaning of section 2(1) and is not, therefore, exempt from disclosure under sections 21(1) or 49(b).

INVASION OF PRIVACY

I have found above that portions of pages 272 and 273, along with page 316 in its entirety, contain the personal information of the deceased person, the appellant and another individual as that term is defined in section 2(1). The Ministry takes the position that this information is exempt from disclosure under section 49(b) of the *Act*.

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. 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 requester and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Section 49(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution the discretion to deny access to the personal information of the requester.

Where, however, a record only contains the personal information of individuals other than the requester, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the *Act* prohibits an institution from releasing this information, unless one of the exceptions set out in that section applies.

In either situation (where the records contain information of the requester and of others, and where the records contain information about others only), sections 21(2), (3) and (4) 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 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].

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. [Order PO-1764]

If none of the presumptions in section 21(3) applies, the institution 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.

Representations of the Parties with Respect to Section 49(b)

The Ministry submits that page 316 contains information which is subject to the presumption in section 21(3)(a) of the *Act* as it relates to the deceased person's medical history, diagnosis, condition, treatment or evaluation. It also argues that pages 272 and 273 contain information which was compiled and identifiable as part of an investigation into a possible violation of law, thereby bringing the information in these pages under the presumption in section 21(2)(b) of the *Act*. The Ministry further submits that due to the very nature of the subject matter of these pages, the information is highly sensitive within the meaning of section 21(2)(f) and was provided to the Coroner's office with an expectation that it would be treated confidentially (section 21(2)(h)).

The appellant submits that the information in pages 272, 273 and 316 ought to be disclosed to him as he is the next of kin of his deceased common law spouse. The appellant points out that he was well aware of the deceased's medical condition and I note that the records indicate that he was present when efforts were made by the ambulance crew to revive her.

Findings

I find that the personal information contained in each of these records relates primarily to the deceased person. Particularly, pages 273 and 316 are concerned with the deceased's medical condition and the treatment rendered to her by the emergency services team. I find that this information falls within the ambit of the presumption in section 21(3)(a). In addition, all of the contents of Records 272 and 273 fall under the presumption in section 21(3)(b) as they were compiled by the Toronto Police as part of its sudden death investigation into a possible violation of law.

I also find that the information relating to the deceased person's medical condition and treatment is highly sensitive within the meaning of section 21(2)(f). In particular, page 316 describes the medical procedures employed by the emergency service team in attempting to revive the deceased. This is a significant consideration favouring the non-disclosure of this information. In the absence of any evidence to support such a conclusion, I find that the factor listed at section 21(2)(h) has no application to the information contained in pages 272, 273 or 316, however.

The appellant takes the position that he is entitled to obtain access to the personal information of the deceased as he is her next of kin. While this may be a consideration which has some bearing on balancing the appellant's right of access against the deceased's right to privacy, because the information is also subject to the presumptions in sections 21(3)(a) and (b), it cannot outweigh their application.

The Ministry has provided me with submissions in support of its exercise of discretion not to disclose this information to the appellant. It states that:

. . . it has carefully balanced the appellant's access rights against the privacy interests of others in the circumstances of this appeal. The Ministry has also taken into consideration the fact that the records were compiled as a result of a coroner's investigation concerning the death of the appellant's spouse.

The Ministry undertook time-consuming and lengthy consultations with approximately forty individuals/organizations in an effort to provide the appellant with access to as much information as possible in the circumstances. It should be noted that the request involved a large number of records and that the Ministry has provided the appellant with access to many of these records.

With particular reference to pages 272 to 273 and page 316, the Ministry submits that these sensitive personal information records were provided by the Toronto Police Service and the Ministry of Health and Long-Term Care to the investigating coroner in confidence for the sole purpose of investigating the

circumstances of the appellant's spouse's death. Such information is generally provided on the understanding that it will be used only for the purpose obtained. Notwithstanding this circumstance, the Ministry undertook consultations with both organizations and has obtained their views in regard to the disclosure of their records. The views of these organizations, as well as the access rights of the appellant, have been taken into account by the Ministry in its exercise of discretion.

The Ministry is mindful of the major purposes and objectives of the *FIPPA*. In its exercise of discretion, the Ministry carefully considered the potential benefits to the appellant's client should the information remaining at issue be disclosed and also the importance of the records to the appellant's client. The Ministry also considered whether any of the information remaining at issue could be severed and released to the appellant. The Ministry ultimately concluded that additional disclosure in the circumstances of this appeal is not appropriate.

In this particular instance, the Ministry was satisfied that the remaining exempt information consisted in part of personal information that may have been provided in confidence by identifiable individuals. The Ministry is also aware that a number of these individuals have been notified by the IPC and given the opportunity to directly express their views regarding disclosure.

The exempt personal information also consists in part of medical information and information that was compiled and identifiable as part of an investigation into a possible violation of law. The Ministry submits that such information is inherently sensitive.

In responding to the appellant's request, the Ministry has attempted to uphold both the spirit and the letter of the *FIPPA* and has come to the conclusion that the information remaining at issue should not be disclosed in the circumstances of this appeal for the reasons set out above.

I find nothing improper in the Ministry's exercise of discretion in the circumstances of this appeal. In summary, I find that the undisclosed information in pages 272 and 273, along with the entire contents of page 316 is exempt from disclosure under section 49(b).

ORDER:

1. I uphold the Ministry's decision to deny access to the undisclosed information in pages 272 and 273 and to page 316, in its entirety.
2. I order the Ministry to disclose the undisclosed information in pages 262-264 and 337 to the appellant by providing him with copies by **January 7, 2003** but not before **January 2, 2003**.

3. In order to verify compliance with Order Provision 2, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant.

Original signed by: _____
Donald Hale
Adjudicator

_____ December 2, 2002