



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

# **ORDER PO-2810**

**Appeal PA08-34**

**Ministry of Community Safety and Correctional Services**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the name and qualifications of the individual who provided an expert opinion referred to in an identified Coroner's Investigation Statement pertaining to the tragic death of the requester's infant son.

The Ministry identified a record responsive to the request and, relying on the discretionary exemptions at section 14(1)(e) (endanger physical safety) and 20 (danger to safety or health) and the mandatory exemption at section 21(1) (invasion of privacy) with particular reference to the factors at sections 21(2)(f) (highly sensitive) and (h) (supplied in confidence) and the presumption at section 21(3)(d) (employment or educational history) of the *Act*, denied access to it, in full.

The requester (now the appellant) appealed the decision.

Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeal process.

I sent a Notice of Inquiry setting out the facts and issues in the appeal to the Ministry and an affected party, initially. The Ministry provided representations in response to the Notice and asked that a portion of them not be shared due to confidentiality concerns. The affected party objected to disclosure of the record. I then sent a Notice of Inquiry along with a copy of the non-confidential representations of the Ministry to the appellant, inviting representations in response. The appellant provided representations in response. I determined that the appellant's representations raised issues to which the Ministry should be given an opportunity to reply. Accordingly, I send a copy of the appellant's representations to the Ministry along with a letter inviting their reply submissions. The Ministry advised that it had nothing to add to its earlier representations.

## **RECORD:**

A letter from the affected party to the Office of the Chief Coroner dated February 5, 2002 setting out their name, contact information and qualifications.

## **PERSONAL INFORMATION**

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" in accordance with section 2(1) of the *Act* and, if so, to whom it relates.

Section 2(1) of the *Act* defines "personal information", as follows:

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

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the content of the original correspondence,
- (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.

To qualify as “personal information”, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

The Ministry submits that information in the record qualifies as the personal information of the party under paragraphs 2(1)(b) and (h) of the *Act*.

The appellant acknowledges that he agreed that a review of the circumstances of his son's death would occur on the condition that the name of the reviewer (who is the affected party in this appeal) would remain confidential. He submits, however, that he had no option but to agree to proceed on that basis, and he takes issue with the conclusions of the review. He further submits that an individual's claim to be an expert is not personal information and that his request for the qualifications of the affected party "only pertains to what makes this person an expert". The appellant also submits that "(w)hen the Coroner's Office used the information on an official document this published the data and made the record public."

With respect to this final point, however, it should be noted that what is at issue in this appeal is not the Coroner's Investigation Statement, but rather a letter that was sent to the Chief Coroner's Office setting out the reviewer's name, contact information and qualifications. There is no reproduction of the substance of the letter at issue in the Coroner's Investigation Statement.

Section 2(3) of the *Act* modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity". Section 2(4) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1). As a result, the name, title, contact information or designation of the affected party that appears in the record, does not qualify as their personal information.

That said, other information in the record at issue does qualify as the personal information of the affected party because it contains "information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual" (paragraph 2(1)(b)) and "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" (paragraph 2(1)(h)). The record also contains the personal information of another identifiable individual. The record does not contain the personal information of the appellant.

## **PERSONAL PRIVACY**

Section 21 reads, in part:

- (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; and
  - (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,
  - (d) relates to employment or educational history.

Section 21(1) is a mandatory exemption protecting information whose disclosure constitutes an unjustified invasion of another individual's privacy. Where a requester seeks access to another individual's personal information, section 21(1) prohibits an institution from disclosing this information unless any of the exceptions at sections 21(1)(a) through (f) apply. If any of these exceptions apply, the information cannot be exempt from disclosure under section 21(1). Section 21(1)(f), in particular, permits disclosure only where it "does not constitute an unjustified invasion of personal privacy."

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, and 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 under section 21(3), 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 (*John Doe*)] though it 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 exemption [See Order PO-1764].

### ***Section 21(3)(d)***

The Ministry takes the position that the record contains the personal information of the affected party that relates to his employment or educational history and falls within the presumption at section 21(3)(d) of the *Act*. As set out above, the appellant submits that his request for the qualifications of the affected party "only pertains to what makes this person an expert."

I have reviewed the record and, in my opinion, it contains a recitation of the affected party's employment and educational history. I find that the presumed unjustified invasion of personal privacy at section 21(3)(d) therefore applies to this information. Section 21(4) does not apply to

this information and the appellant did not raise the possible application of the public interest override at section 23 of the *Act*. Accordingly, I conclude that the disclosure of this information would constitute an unjustified invasion of the personal privacy of the affected party. Accordingly, that information is exempt from disclosure under section 21(1) of the *Act*.

As I have found that the section 21(3)(d) presumption applies, it is not necessary for me to address whether the factors in section 21(2) might also apply. Similarly, as I have found the information to be exempt under section 21(1) of the *Act*, it is also not necessary for me to consider whether it is also exempt under sections 14(1)(e) or 20.

I will now turn to the other information requested by the appellant.

## **HEALTH AND SAFETY**

Section 20 states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

In the case of section 20, the institution must provide evidence to establish a reasonable basis for believing that harm will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. However, while the expectation of harm must be reasonable, it need not be probable [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.) (*Ontario Ministry of Labour*)].

A person's subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003].

The term "person" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

### ***Representations on Section 20***

In the confidential portion of its representations, which I am unable to reproduce in this order, the Ministry explains the factual foundation for its concerns.

In addition, the Ministry takes the position that the rationale for the application of section 20 in the decision of Adjudicator Laurel Copley in Order PO-1940, although involving a different appellant and institution, is relevant in the circumstances of the request before me in this appeal.

The appellant submits that no person's life or safety is in danger. He states that his various complaints surrounding the circumstances of his son's death, or his challenge to the Office of the Chief Coroner's determinations, have all been made through appropriate channels. In his representations he lists nine such complaints or actions that he has initiated and advises that the name and qualifications of the affected party will be used to make a further complaint to the

College of Physicians and Surgeons of Ontario. In his representations he also recounts his involvement in an incident that occurred at a hospital site.

***Analysis and Findings on Section 20***

In Order PO-1940, Adjudicator Laurel Cropley found that section 20 applied to deny records to an appellant who was deemed to be “angry and potentially dangerous” after having engaged in a pattern of abusive and intimidating correspondence with the institution. In that order she stated:

[I]t is noteworthy to add (in response to the appellant’s assertions that he would not physically attack anyone) that a threat to safety as contemplated by section 20 is not restricted to an “actual” physical attack. Where an individual’s behaviour is such that the recipient reasonably perceives it as a “threat” to his or her safety, the requirements of this section have been satisfied. As the Court of Appeal found in *Ontario (Ministry of Labour)*:

It is difficult, if not impossible, to establish as a matter of probabilities that a person’s life or safety will be endangered by the release of a potentially inflammatory record. Where there is a reasonable basis for believing that a person’s safety will be endangered by disclosing a record, the holder of that record properly invokes [sections] 14(1)(e) or 20 to refuse disclosure.

I agree with the reasoning of Adjudicator Cropley and find it applicable to the current appeal.

In the current appeal, based on the confidential and non-confidential representations of the parties, I conclude that there is a reasonable basis for concern about the appellant’s behaviour and that the reasons for resisting disclosure are not frivolous or exaggerated. I find that the evidentiary standard set out in *Ontario (Ministry of Labour)* for establishing the application of section 20 has been met in this appeal.

The balance of the information at issue in this appeal, therefore, qualifies for exemption under section 20. As I have found this information to be exempt under section 20, it is not necessary for me to consider whether it is also exempt under section 14(1)(e) of the *Act*.

Finally, based on the confidential and non-confidential representations of the Ministry, I am satisfied that it appropriately exercised its discretion in withholding the information that I have found to be subject to section 20 of the *Act*.

**ORDER:**

I uphold the decision of the Ministry.

Original signed b:

\_\_\_\_\_  
Steven Faughnan  
Adjudicator

\_\_\_\_\_  
July 31, 2009