

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3767

Appeal PA17-165

Archives of Ontario

August 31, 2017

Summary: The appellant submitted a request to the Archives of Ontario (the archives) under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for information and records regarding an inmate (the affected person) at an Ontario psychiatric hospital. The archives denied access to the responsive record, citing the mandatory personal privacy exemption in section 21(1). This order upholds the archives' decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of personal information), 21(1)(b).

Orders and Investigation Reports Considered: Order PO-2541

OVERVIEW:

[1] The appellant submitted a request to the Archives of Ontario (the archives) under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for information and records regarding an inmate (the affected person) at an Ontario psychiatric hospital.

[2] The archives issued its access decision, where it stated that pursuant to the personal privacy exemption in section 21(5) of the *Act*, it was unable to confirm or deny the existence of any records regarding the affected person.

[3] The appellant appealed the archives' decision.

[4] The appeal could not be resolved through the mediation stage and as a result, the appeal proceeded to the adjudication stage where an adjudicator conducts an inquiry. Subsequently, the archives issued a supplementary decision letter confirming the existence of one responsive record and refusing access to this record pursuant to the mandatory personal privacy exemption in section 21(1).

[5] Representations were sought and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[6] In this order, I uphold the decision by the archives that the record is exempt under section 21(1) and dismiss the appeal.

RECORD:

[7] As described by the archives, the responsive record is a one-page document containing the affected person's name and a small amount of other information about him.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[8] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) 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 if 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 contents 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;

[9] 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.¹

[10] Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

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

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their

¹ Order 11.

dwelling and the contact information for the individual relates to that dwelling.

[11] The archives submits that the information contained in the record is the personal information of the affected person as set out in paragraphs (a), (b), (c) and (d) above and includes this individual's "age, family status, medical and psychiatric history, any identifying number assigned to a specific individual, and address."

[12] The archives states that, based on the information contained within the record and the additional context provided by the appellant, there is nothing to suggest that the affected person is deceased. It states that the exception to the definition of personal information set out in subsection 2(2) of *FIPPA* does not apply in these circumstances. In addition, it states that the information does not qualify as business identity information as contemplated in subsection 2(3).

[13] The appellant does not dispute that the record contains personal information and does not claim that the exceptions in sections 2(2) and 2(3) apply.

Analysis/Findings

[14] 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.²

[15] 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.³

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[17] I find that the record contains the personal information of the affected person in his personal capacity, as described above by the archives in accordance with paragraphs (a) to (d) of the definition of personal information in section 2(1). The record does not contain the information of the appellant.

[18] I will now consider whether the mandatory personal privacy exemption in section 21(1) applies to the record.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

B. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

[19] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[20] The appellant previously advised the archives that he wished to access the information he seeks as part of his ongoing health treatment plan, as such he has raised the application of the exception in section 21(1)(b), which reads:

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

in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates.

[21] The archives states that in order to meet the "compelling" threshold, for the disclosure of personal information under section 21(1)(b), the purpose of seeking the information must be a matter of immediate and essential health or safety affecting an individual.

[22] The archives refers to Order PO-2541, where the IPC found that this section applied in the context of a request made for information for two correctional centre files related to an individual who was believed to be the requester's birth father. The requester in that case sought the information because the requester's child was losing the function of her arm and no known cause was evident to the medical professionals treating the requester's child. In that case, a suggestion was made that to help identify the cause for the loss of arm function, a complete medical family history be obtained, and as such the request was submitted.

[23] The archives states that after considering the appellant's request and rationale, and having regard to the limited amount of personal information contained in the record at issue in this appeal, it has determined that the threshold requirements outlined in section 21(1)(b) do not exist in the same way that they did in Order PO-2541 to warrant disclosure of the affected person's personal information to the appellant.

[24] The appellant states that he has PTSD⁵ as a result of his mother's murder and that he would like to receive access to the information in the record to assist in his treatment plan.

⁵ Post-Traumatic Stress Disorder.

[25] The appellant submits that Order PO-2541 does not preclude a finding that the appellant's diagnosis of PTSD, the corresponding intrusive symptoms he experiences and his psychologist's treatment plan create the "compelling circumstances" required by section 21(1)(b).

[26] Following Order PO-2541, the appellant submits that it is not required that the information in the record actually relates to the appellant's psychological condition and that it is sufficient that the record contains medical information whose possible relevance has not been ruled out.

Analysis/Findings

[27] In Order PO-2541, there were 19 pages of responsive records. Of these, pages 4, 12, 13, 14, 15 and 16 were of a medical nature and included notes that recorded medical appointments involving the named individual, two records comprising a Summary of Medical Examination and Summary of Physical Findings regarding the named individual, and a serological report concerning a test he had. The remaining records related to this individual's arrest and his incarceration at the named correctional facility.

[28] In Order PO-2541, Senior Adjudicator John Higgins concluded that section 21(1)(b) did not require him to decide whether the information in the records actually relates to the medical condition of the requester. He determined that such an assessment can only be made by a physician with a full understanding of the requester's medical situation.

[29] Senior Adjudicator Higgins stated:

It is sufficient in this case that the records in fact contain medical information whose possible relevance has not been ruled out. Also, in my view, section 21(1)(b) only applies to the information of a medical nature in the records, and not to more general information about the named individual's offence and/or correctional history. [Emphasis added by me]

[30] The appellant in this appeal is seeking the affected person's "...outcome in psychiatric treatment and, essentially, whether this individual was rehabilitated and released back into society or in fact may remain under treatment in a forensic psychiatric unit."

[31] The record at issue is an index card that is several decades old, which contains the affected person's name, address, identifying numbers, location, next of kin, and some dates. Based on my review of the record at issue in this appeal, I find that it contains general information about the affected person's correctional history and does not contain the detailed medical information sought by the appellant.

[32] Accordingly, as the record contains general correctional information and does not

contain the type of information of a medical nature as described in Order PO-2541, relying on the findings in that order, I find that the exception in section 21(1)(b) does not apply. Specifically, based on all of the evidence, I find that compelling circumstances do not exist to warrant the disclosure of the information in the record under this exception.

[33] As stated above, the appellant only raised the application of the exception in section 21(1)(b) in support of his argument that the information in the record should be disclosed to him.

[34] As noted above, where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[35] I have found that the exception in section 21(1)(b) does not apply. Only the archives provided representations on the remaining exceptions in section 21(1),⁶ namely sections 21(a) and 21(1)(c) to (f). The archives submits that the remaining exceptions in section 21(1) do not apply. I agree with the archives and find that the remaining exceptions in section 21(1) do not apply.

[36] As noted above, where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. As none of these exceptions apply, accordingly, the record is exempt under the mandatory personal privacy exemption in section 21(1).

⁶ The remaining exceptions in section 21(1) read:

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

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

ORDER:

I uphold the archives' decision and dismiss the appeal.

Original Signed by: _____

Diane Smith
Adjudicator

_____ August 31, 2017