



**Information and Privacy
Commissioner/Ontario**

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

ORDER 172

Appeal 890059

Ministry of Municipal Affairs



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

O R D E R

This appeal was received pursuant to section 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to a record under section 24(1), a right to appeal any decision under the Act to the Information and Privacy Commissioner. On July 27, 1989, the undersigned received a delegation of the power to conduct inquiries and made Orders under the Act with respect to this appeal.

The facts of this case and the procedures employed in making this Order are as follows:

1. In a letter dated January 24, 1989, a request was made to the Ministry of Municipal Affairs (the "institution") for the following information:

Re: City of Belleville Municipal Review 1988

1. The petition submitted to the Ministry of Municipal Affairs in 1988 from residents of the city of Belleville requesting a review of actions of Belleville city council and Mayor George Zegouras.
2. Names of the persons signing the above/mentioned petition.
3. The covering letter which accompanied the petition.
4. The names of persons signing the above/mentioned letter.
5. Any transmission document related to the above/mentioned petition.

6. Any correspondence between the Belleville petitioners and the ministry pertaining to the requested review.
2. On February 27, 1989, the institution responded as follows:

Partial access is granted to the information which you requested. The following information has been severed from the material you have requested. The severances include:

- . the names of the persons signing the petition as release would reveal information about the personal opinions or views of the individuals as per section 21(3)(g);
 - . the name of the individual who prepared the response from the Minister as release would reveal advice of a public servant as per section 13(1);
 - . the name and address of the individual to whom the Minister's response was sent as release would reveal information about the personal opinions or views of the individual as per section 21(3)(g);
 - . the names and addresses of individuals from the letter submitted from a petitioner to the Minister as release would constitute an unjustified invasion of personal privacy as per section 21(1)(f).
3. In a letter dated March 14, 1989, the requester appealed the decision of the head of the institution to the Information and Privacy Commissioner (the "Commissioner"). Notice of the appeal was given to the institution.
 4. Upon receipt of the appeal, the Appeals Officer assigned to the case obtained and reviewed the records containing the information that was severed and withheld from disclosure. The severed information can be described as follows:
 - A. the name and address of the recipient of a letter dated May 26, 1988 from the Honourable John Eakins, Minister of Municipal Affairs,
 - B. the name, office location and office phone number of the individual who prepared the letter of May 26, 1988 for the Minister and a control number,

- C. the names of approximately 70 individuals who are listed on a four page petition,
 - D. the name, address and signature of the sender of a letter dated June 9, 1988, addressed to the Minister of Municipal Affairs, and
 - E. the names and affiliation of two individuals appearing at the bottom of the above noted June 9, 1988 letter, as having received a copy of this letter.
5. Efforts were made by the Appeals Officer to obtain a resolution of this appeal through mediation. These attempts were not successful, and by letters dated August 2, 1989, notice was given to the institution and the appellant that an inquiry was being undertaken to review the decision of the head. The Notice of Inquiry was accompanied by a report prepared by the Appeals Officer. This Report is intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal, and sets out questions which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. The Appeals Officer's Report indicated that the parties, in making their representations to me, need not limit themselves to the questions set out in the Report.
6. I received written representations from both parties and I have considered them in reaching my decision in this appeal.

The purposes of the Act are set out in section 1 and read as follows:

- 1. The purposes of this Act are,
 - (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,

- (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Section 53 of the Act provides that the burden of proof that a record, or a part thereof, falls within one of the specified exemptions in the Act lies with the head of the institution.

The issues arising in this appeal are as follows:

- A. Whether any of the information severed from the records and withheld from disclosure falls within the exemption provided by section 13(1) of the Act.
- B. Whether any of the information severed from the records and withheld from disclosure contains "personal information" within the meaning of section 2(1) of the Act.
- C. If the answer to Issue "B" is in the affirmative, whether any of this information is properly exempt from disclosure pursuant to section 21(1) of the Act.

ISSUE A: Whether any of the information severed from the records and withheld from disclosure falls within the exemption provided by section 13(1) of the Act.

Section 13(1) of the Act reads as follows:

13.__(1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

The institution relied on section 13(1) to exempt from disclosure the information contained in severance B. The institution's representations do not provide any arguments in support of this decision. I therefore find that the institution has not discharged its onus of proof with respect to severance B. Moreover, the disclosure of the name of or other identifying information concerning a public servant would not, per se, disclose the nature of "advice or recommendations" within the meaning of section 13(1). The point of section 13(1), it would appear, is to permit the withholding of records actually containing "advice" _ not to create, in effect an anonymous public service by severing and withholding references to the names of public servants. I therefore order the institution to release the information contained therein, in full, to the appellant.

ISSUE B: Whether any of the information severed from the records and withheld from disclosure contains "personal information" within the meaning of section 2(1) of the Act.

The institution relied on the mandatory exemption provided by section 21(1) of the Act, to withhold from disclosure, the information contained in severances A, C, D and E. Before deciding whether this exemption applies to any of these severances, I must consider whether the information contained in these severances falls within the definition of "personal information" provided for in section 2(1) of the Act.

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 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;

With respect to severance C, the institution submitted that:

The petitioners' names are personal information under clause (h) of the definition of personal information in s.2 of the Act because disclosure of the names

would reveal other personal information about the petitioners.

Specifically, the record requested is the names only, without other personal information relating to the petitioners. In this case, however, the names do not appear alone but in the context of having signed a petition requesting a review of municipal practices. Disclosure of the names would reveal the fact that identifiable individuals signed the petition, which is other personal information about the petitioners.

I agree with the argument put forward by the institution that the names of the petitioners, contained in severance C, qualify as "personal information" under subparagraph (h) of the definition of "personal information set out in section 2(1) of the Act. The disclosure of the petitioners' names in this instance would "reveal other personal information" about them, that being, that they signed a petition requesting the Minister of Municipal Affairs to establish a formal inquiry to investigate certain activities of the Belleville Municipal Council.

The name and address that is contained in severance A is the same name and address that appears in severance D. This individual is also listed as the first petitioner in severance C. With respect to severances A and D, I am satisfied that both contain "personal information" as defined by section 2(1) of the Act.

Although the institution withheld the information contained in severance E from disclosure on the basis of section 21(1)(f), the representations I received from the institution do not provide any arguments with respect to this severance.

The information contained in this severance is the name and position of a member of the provincial parliament and the name of a reporter of a named newspaper. In my view, this information does not qualify as "personal information" as defined in section 2(1) of the Act. The names do not "appear with other personal information relating to the individual" nor would the disclosure of the names of the individuals and their

affiliation, "reveal other personal information about the individual". As this severance does not contain "personal information", the exemption provided by section 21(1) of the Act is not applicable and I therefore order disclosure of the contents of severance E to the appellant.

ISSUE C: If the answer to Issue "B" is in the affirmative, whether any of this information is properly exempt from disclosure pursuant to section 21(1) of the Act.

Section 21 of the Act sets out an exemption to the general right of access which is designed to protect the privacy of the individuals about whom information is recorded in government documents. The basic structure of the section 21 exemption was described by the Commissioner in Order 113, (Appeal Number 880361) dated November 9, 1989 in the following terms:

Section 21 of the Act provides for a general rule of non_disclosure of personal information to any person other than the person to whom the information relates. Certain exceptions to this general rule are set out in section 21(1). These exceptions include the consent of the person whose information it is, health and safety circumstances, information collected for the purpose of maintaining a public record, research purposes, or where it would not be an unjustified invasion of personal privacy to release the information. If it is established that the disclosure

of the information would not result in an unjustified invasion of personal privacy, then the personal information must be released.

Specifically, section 21(1) (a) of the Act provides that:

21.__(1) 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;

Severance C includes the names of approximately 70 petitioners listed on a four page petition. What is being petitioned for is identified at the top of each of the four pages and was released in full to the appellant. Underneath the body of the petition are the names, addresses and signatures of the petitioners. The appellant is only seeking access to the names of the petitioners. The addresses and signatures were severed by the institution and are not in issue in this appeal.

Petitions by their very nature, are not documents that have an aura of confidentiality. The signatories to a petition do so voluntarily. By including their name on a petition, a signatory takes a public stand with respect to the issue being petitioned for. Petitioners are aware that they are revealing personal information about themselves when they add their names in support of a petition. They also realize that the petition will be circulated and used in whatever manner is necessary in order to further the cause being petitioned for.

Further, petitions are usually collected in a fairly public manner. Proponents of a petition often seek additional

signatories in shopping malls, in front of public buildings or in door to door campaigns. Individuals are approached to add their names to the petition and are given the opportunity to read the body of the petition. Upon doing so, the individual, who may or may not become a signatory, will have the opportunity to see the names, addresses and signatures of those who have already lent their support to the petition.

The appellant in this matter argued that:

Citizens use the petition form for objections to policy at all levels of government. These names on petitions are public knowledge, and the various levels of government are aware of who is doing the petitioning. In Belleville, City Council and committees of council are often faced with petitions and accusations made in public forum, with names available to the public. It is our stand that this creates a sense of fairness...

The petition in this matter does not contain anything on its face to indicate that the petitioners had any expectation of confidentiality. It is my view that each of the signatories to the petition can be said to have implicitly consented to the disclosure of their personal information contained in the petition.

Commissioner Linden recently had an opportunity to deal with a similar situation in Order 154 (Appeal Number 880341) dated March 7, 1990. Part of one of the records in issue in that appeal was a letter to the Ministry of Community and Social Services which enclosed a signed petition. At pages 27 and 28 of the Order, Commissioner Linden found that the author of the covering letters and the signatories of the petition had

consented to the release of their personal information. He stated:

While the consent of these individuals is not explicit, it can, in my view, reasonably be implied in the circumstances of this case. It is significant that the individuals who signed the petition voluntarily lent their support to a matter of public concern. Petitions as a general rule are not intended to be kept secret and it would appear from the face of this record that the personal information contained in the record has already been provided to a number of recipients including the major and members of the Scarborough City Council. In my view, it is clear from the actions of those involved in the petition that they have consciously decided to forego some element of their personal privacy by taking a public stand on an issue of importance to them. Accordingly, I find that the portions of the record which contain "personal information" are not exempt from disclosure under section 21(1), because the information falls within the exception contained in section 21(1)(a) of the Act.

I concur with the reasoning of the Commissioner and find that in the circumstances of this appeal, the petitioner's names, contained in Severance C, are not exempt from disclosure under section 21(1) of the Act as the petitioners can be said to have implicitly consented to the release of the personal information contained on the face of the petition and the exception to the exemption contained in section 21(1)(a) therefore applies.

Similarly, the information contained in severances A and D falls within the the scope of the section 21(1)(a) exception to non_disclosure. The personal information contained in these severances is the same personal information that is revealed on the face of the petition. The records that contain these severances are correspondence that relate to the petition itself

and thus disclose the fact that certain individuals signed the petition in question.

Having found that an exception to the general rule against disclosure of personal information applies in this case, it is not necessary for me to consider whether the disclosure of the requested information would constitute an unjustified invasion of personal privacy. But, as I have received representations on this issue from both the institution and the appellant, I have decided to comment briefly on this point.

Had I not found that the exception under section 21(1)(a) was applicable to severances A, C and D, I would have concluded that the disclosure of the information contained within these severances would not constitute an unjustified invasion of the personal privacy of the persons to whom the information relates.

None of the factors enunciated in section 21(3) exist to raise a presumption of an unjustified invasion of personal privacy. The institution argued that section 21(3)(g) was applicable in the circumstances of this appeal. Section 21(3)(g) of the Act provides:

21.__(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

...

(g) consists of personal recommendations or evaluations, character references or personnel evaluations;

The correct interpretation of subparagraph (g) is perhaps not abundantly clear. When it is kept in mind, however, that the definition of "personal information" set out in section 2(1) of

the Act, reproduced above, excludes from the definition in subparagraph (e), "the personal opinions or views of the individual except where they relate to another individual", it becomes apparent that the thrust of 21(3)(g) is to raise a presumption concerning recommendations, evaluations or references about the identified individual in question rather than evaluations, etc., by that individual. If the evaluations were by the individual and about someone else, they would not constitute "personal information" about the evaluating individual under the Act. To give the subparagraph a consistent reading, then, it appears that it is properly construed to apply to recommendations, evaluations and references about, rather than by, the identified individual in question.

In the present case, the personal information contained in severances A, C and D is not "personal recommendations" etc. about the named individuals. Rather, this information could be characterized as the "personal recommendations" of the named individuals about the establishment of an inquiry into the activities of the Belleville municipal council.

Section 21(2) of the Act, sets out some of the criteria to be considered by the head in determining whether the disclosure of personal information constitutes 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,

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

None of the listed factors weighing against disclosure appear to be present in this case. Moreover, a strong argument can be made that subparagraphs (a) and (d) signal considerations that weigh heavily in favour of disclosure. With respect to subparagraph (a), it is evident that the availability of the petition, with names included, would assist in the exercise of subjecting to public scrutiny the decision of the Minister to either act or not act upon the request contained in the petition. The point of the petition at issue in the present

appeal was to invite the Minister to exercise the discretion conferred on the Minister by section 180 of the Municipal Act,

R.S.O. 1980, chapter 411, to establish a commission of inquiry to inquire into the affairs of a municipality upon the request of 50 ratepayers of the municipality in question. In order to determine whether that discretion has been properly exercised or indeed, whether the individuals who signed the petition were in fact ratepayers, access to the petition, names included, would be necessary.

Further, with respect to subparagraph (g), it is evident that the filing of a petition of this kind will often carry with it the inference that certain identifiable or, perhaps, identified individuals have engaged in wrongful or, indeed, unlawful activity. Are the individuals subject to such allegations not entitled to know the identity of their accusers? The alleged wrongdoing, it should be noted, may be the subject of a formal commission of inquiry. The Municipal Act provides in section 180 that in response to a petition signed by not less than 50 ratepayers, the Minister may establish a commission of inquiry to investigate the matter which would have all the powers of a commission of inquiry established under the Public Inquiries Act, R.S.O. 1980, chapter 411. Surely, the preparation of an adequate response by the individuals whose conduct is the subject of the petition is contingent, in part, on knowing the sources of the concerns that have led or may lead to the establishment of such a public inquiry.

In addition, I return to the point made above with respect to the public nature of a petition. Even if the public character of the document does not properly give rise to a holding that disclosure may be made on the basis of consent within the meaning of section 21(1)(a), surely this character is relevant in a determination of whether disclosure constitutes an

unjustified invasion of personal privacy. The privacy interest to be weighed against disclosure, if it exists at all, is not of significant weight. The right to petition the government

for redress of grievances is a valued and important part of our political tradition. It is no part of that tradition, however, that petitions should be created and, indeed, acted upon by the government under a veil of secrecy.

Having due regard to all of the circumstances relevant to this matter, then, it is my conclusion that the disclosure of the personal information contained in severances A, C and D would not constitute an unjustified invasion of the personal privacy of those to whom the information relates. Indeed, it is my view that even if, contrary to the views I have expressed above, section 21(3)(g) applies to the present facts, the presumption would be overwhelmed by the considerations that weigh in favour of disclosure.

In summary, I therefore order the institution to release all of the information contained in severances A, B, C, D and E to the appellant within 20 days of the date of this Order. The information that is contained in these severances and which is the subject matter of this Order has been previously identified on pages 2 and 3 of this Order.

I also order the head to advise me, in writing, within five (5) days of the date of disclosure, of the date on which disclosure was made. Said notice should be forwarded to the attention of Maureen Murphy, Registrar of Appeals, Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
John D. McCamus
Inquiry Officer

June 4, 1990
Date