



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

ORDER 151

Appeal 890010

Ministry of Culture and Communications



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O R D E R

This appeal was received pursuant to subsection 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 subsection 24(1) or a request for access to personal information under subsection 48(1) a right to appeal any decision of a head under the Act to the Commissioner.

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

1. On November 14, 1988, the requester wrote to the Ministry of Culture and Communications (the "institution") seeking access to the:

Auditor's Report(s) of Community Improvement Program.

2. On December 9, 1988, the Freedom of Information and Privacy Co-ordinator for the institution (the "Co-ordinator") issued a notice under subsection 28(1)(a) of the Act to those individuals and organizations who might be affected by the release of the record, affording them the opportunity to make representations regarding disclosure.
3. On December 14, 1988, the Co-ordinator advised the requester that:

The request may affect the interests of third parties.

The third parties are being given an opportunity to make representations concerning disclosure of

the record. A decision on whether the record will be disclosed will be made by January 18, 1988, (sic) in accordance with subsection 28(4) of the Act.

4. On January 18, 1989, the Co-ordinator advised the requester and the third parties that the institution's decision was to grant access to the requested record.
5. On January 23, 1989, my office received an appeal of the decision of the institution from legal counsel to two of the third parties. The Museum of Indian Archaeology (the "corporate third party appellant") objected to the release of the record pursuant to section 17, while [named individual] (the "individual third party appellant") objected to the release of personal information in the record pursuant to section 21 of the Act.

I gave notice of the appeal to the corporate third party appellant, the individual third party appellant and the institution on January 27, 1989. A member of my staff advised the requester of the appeal on February 3, 1989.

6. As soon as the appeal was received by my office, an Appeals Officer was assigned to investigate the circumstances of the appeal, and attempt to mediate a settlement.
7. The Appeals Officer obtained and reviewed the record in issue which can be described as a 13 page report by the Internal Audit Branch of the institution with respect to a grant to the University of Western Ontario (the "University") for the excavation of a known archaeological site. The Museum of Indian Archaeology, an affiliate of the University, was to perform the excavation.

8. During mediation of the appeal, the corporate third party appellant withdrew its reliance on section 17, but indicated its support for the individual third party appellant's continuing objection to the release of the record pursuant to section 21.

As a result of further mediation efforts, the individual third party appellant (the "appellant") consented to the release of the record with the exception of three severances pursuant to section 21. On November 14, 1989 the institution released the record to the requester with severances to the last paragraph on page (i) and the first and last paragraph on page 3. Although not part of the original request, the institution also released to the requester a letter which related to a review of the findings contained in the requested record.

The appellant is the only party objecting to the release of the severed portions of the record remaining at issue in this appeal.

9. As a full settlement of the issues raised in the appeal was not possible, notice that I was conducting an inquiry was sent to the requester, the institution and the appellant on November 30, 1989. Enclosed with each notice letter was a report prepared by the Appeals Officer, 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 paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. This

report indicates that the parties, in making their representations to me, need not limit themselves to the questions set out in the report.

10. Written representations were received from the appellant's lawyer and the institution. The requester chose not to make any representations. I have considered the representations in making this Order.

The issues arising in this appeal are as follows:

- A. Whether the severed portions of the record contain "personal information" within the meaning of subsection 2(1) of the Act.
- B. If the answer to Issue "A" is in the affirmative, whether disclosure of the severed portions of the record would be an unjustified invasion of the personal privacy of the person to whom the information relates, pursuant to section 21 of the Act.
- C. Whether the requested record could reasonably be severed, under subsection 10(2) of the Act, without disclosing the information that falls under the exemption.

Before beginning my discussion of the specific issues in this case, I think it would be useful to briefly outline the purposes of the Act as set out in section 1. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter-balancing privacy protection purpose of the Act. This subsection provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide

individuals with a right of access to their own personal information.

Further, section 53 of the Act provides that where a head refuses access to a record, the burden of proof that the record falls within one of the specified exemptions in this Act lies upon the head. However, as is the case in this appeal and as previously stated at page 9 of Order 49 (Appeal Numbers 80001 and 880048) dated April 10, 1989:

...where a third party appeals the head's decision to release any such record, the onus of proving that the record should be withheld from disclosure falls to the third party.

ISSUE A: Whether the severed portions of the record contain "personal information" within the meaning of subsection 2(1) of the Act.

Where a request involves access to personal information I must, before deciding whether an exemption applies, ensure that the information in question falls within the definition of "personal information" in subsection 2(1) of the Act. Subsection 2(1) of this Act provides the following definition:

"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;

Examination of the severed portions of the record shows that it contains the views or opinions of other individuals about the appellant. Therefore, in my view, all of the information severed from the record falls within the definition of personal information under subsection 2(1) of the Act.

ISSUE B: If the answer to Issue "A" is in the affirmative, whether disclosure of the severed portions of the record would be an unjustified invasion of the personal privacy of the person to whom the information relates, pursuant to section 21 of the Act.

Once it has been determined that a record or part of a record contains personal information, subsection 21(1) of the Act prohibits the disclosure of this information, except in certain

circumstances. In particular subsection 21(2)(f) of the Act reads as follows:

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.

Subsection 21(2) sets out some criteria to be considered by the head when determining if disclosure of personal information constitutes an unjustified invasion of personal privacy.

Subsection 21(2) of the Act states that:

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.

In 1985 an archaeological grant was awarded to the University of Western Ontario, on behalf of its affiliate, the Museum of Indian Archaeology (the "Museum"), to undertake the salvage excavation of the Keffer site in the Town of Vaughan. The grant was awarded under the Community Facilities Improvement Program (the "CFIP") by the institution's Ontario Heritage Branch.

The grant was reviewed by the Office of the Provincial Auditor as part of a sample audit of the grants awarded under the CFIP. In light of concerns expressed by the Provincial Auditor, the institution's Internal Audit Branch was requested to review the grant. It is the report of the Internal Audit Branch which is the subject of this appeal.

The University and the Museum maintained that the findings contained in the report by the Internal Audit Branch were in error and advised the Deputy Minister of Culture and Communications accordingly. Consequently, a review of the findings was conducted. The Deputy Minister wrote to the University and the Museum advising that since there was room for interpretation of the findings of the Internal Audit Branch, the institution was prepared to accept the University's position. As previously mentioned, although it was not part of the original request, a copy of this letter was provided to the requester, along with the severed record.

In his representations, the appellant's lawyer maintained that the disclosure of personal information contained in the severed portions of the record would be an unjustified invasion of the appellant's personal privacy.

The appellant's lawyer made reference to subsections 21(2)(e)(g) and (i) in the following representations:

Furthermore, the Appellant submits that disclosure of the information contained in the above three severences (sic) would have an adverse impact upon [the appellant's] professional reputation generally. The Appellant submits that [the appellant's] entire career and, in fact, [the appellant's] entire way of life, is based upon [the appellant's] professional reputation and [the appellant's] credibility.

The appellant's lawyer also made the following representations:

In addition, and also in relation to Section 21(2) of the Act, the record in question in its present form (ie. the above three severences) (sic) serves no proper purpose and is inaccurate and unreliable in light of the decision taken by the Minister of Culture and Communication (sic) which was confirmed by the letter dated June 22, 1989, by Mr. David B. Silcox, Deputy Minister of Culture and Communications.

The Deputy Minister's letter stated that:

The Ministry's Internal Audit Branch recently completed its review of the earlier findings regarding the Keefer (sic) site excavation grant to the University of Western Ontario through our Community Facilities Improvement Program (CFIP). In reviewing the comments, the Ministry believes that there is room for interpretation and, in the interest of fairness, is prepared to accept the University's position that it provided full information to the Ministry concerning the status of external funding to the project at the time of the application.

I have therefore instructed that the current default status of the University and Museum of Indian Archaeology in relation to the Ministry be lifted.

Having reviewed the record in issue and the representations submitted by the appellant and the institution, I find that there is sufficient reason to question the accuracy or reliability of the personal information contained in the severed portions of the record in view of the acknowledgement from the Deputy Minister that there is "room for interpretation" and the fact that the default status was lifted. Further, it is my view that there is sufficient reason to believe that disclosure of the personal information in the record may unfairly damage the appellant's reputation. Consequently, I find that disclosure of the person information in the severed portions of the record would constitute an unjustified invasion of the appellant's personal privacy. I therefore order the head not to disclose the severed portions of the record to the requester.

ISSUE C: Whether the requested record could reasonably be severed, under subsection 10(2) of the Act, without disclosing the information that falls under the exemption.

While I have found that release of the personal information in the record would be an unjustified invasion of the appellant's personal privacy, I have also reviewed the severed portions of the record with a view to determining whether further severances might reasonably be made pursuant to subsection 10(2) of the Act.

Subsection 10(2) of the Act states that:

Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

In Order 24 (Appeal Number 880006) dated October 21, 1988, established the approach which should be taken when considering the severability provisions of subsection 10(2). At page 13 of that Order I stated:

A valid subsection 10(2) severance must provide the requester with information that is in any way responsive to the request, at the same time protecting the confidentiality of the record covered by the exemption.

Following a review of the severed portions of the record, I find that it is not possible to make further severances to the record without disclosing the information that falls under the section 21 exemption.

In summary, I Order the head not to disclose the severe portions of the record to the requester.

Original signed by:
Sidney B. Linden
Commissioner

February 26, 1990
Date