



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

ORDER 171

Appeal 890023

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 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 make Orders under the Act with respect to this appeal.

The circumstances giving rise to this appeal and the procedures employed in making this Order are as follows:

1. By letter dated November 4, 1988, a request was made to the Ministry of Municipal Affairs (the "institution") for the following information:

Now that the Administrative Review of the City of Belleville is completed and has become a public document, I wish to request through you a list of the petitioner names who asked for the inquiry as I believe that the public has a responsibility to know.

2. On December 9, 1988, the institution responded as follows:

Access is denied to the records you have requested under section 21(1)(f) of the Act. This provision applies because release of the names would reveal other personal information about the individuals.

3. By letter dated February 7, 1989, addressed to the Information and Privacy Commissioner (the "Commissioner"), the requester, through his representative, appealed the decision of the head of the institution. 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 record. The record that contains the information requested by the appellant, is a four page petition. The subject matter of the petition is identified at the top of each of the four pages. Underneath the body of the petition are the names, signatures and addresses of the petitioners. The number of petitioners contained on the four page petition is approximately seventy.
5. An attempt to mediate the dispute between the parties was made by the Appeals Officer. During the course thereof, the requester indicated that he would also like access to the body of the petition. The institution agreed to the release of this information and it was forwarded to the requester.
6. Mediation did not result in a resolution of this appeal, however, and by letters dated August 2, 1989, notice was given to the institution and the appellant that an inquiry to review the decision of the head would be undertaken. 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, need not limit themselves to the questions set out in the Report.
7. 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. (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 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 the requested information is "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is in the affirmative, whether the exemption provided by section 21(1) of the Act, applies in the circumstances of this appeal.

ISSUE A: Whether the requested information is "personal information" as defined in section 2(1) of the Act.

The institution relied on the mandatory exemption provided by section 21(1) of the Act, to withhold the names of the petitioners from disclosure to the appellant. Before deciding whether this exemption applies, I must consider whether the

information withheld from disclosure 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;

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 am persuaded by the argument put forward by the institution to the effect that the names of the petitioners 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 names of the petitioners 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.

ISSUE B: If the answer to Issue A is in the affirmative, whether the exemption provided by section 21(1) of the Act, applies in the circumstances of this appeal.

Section 21 of the Act sets out an exemption to the general right of access which is designed to protect the privacy of individuals about whom information is recorded in government documents. The basic structure of the section 21 exemption was described by the Commissioner in his 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) 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;

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 to a petition. They also realize that the petition will be circulated and used in whatever manner is necessary in order to further the cause which is the subject of the petition.

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 eventually 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:

The rate payers who signed the Petition did not do so under the guise or protection or promise that their names as Petitioners would at no time be released.

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 occasion 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 mayor and members of the Scarborough City Council. In my view, it is clear from the actions of those involved with 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 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 their personal information contained on the face of the petition and the exception to the exemption contained in section 21(1)(a) applies.

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. However, as I have received representations on this issue from both the institution and the appellant, it may be helpful to comment briefly on this point.

Had I not found that the exception under section 21(1)(a) of the Act was applicable in the circumstances of this appeal, I would have concluded that the release of the names of the petitioners would not constitute an unjustified invasion of the personal privacy of the petitioners.

None of the factors enunciated under section 21(3) of the Act 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 that would be revealed if the names of the petitioners was to be released does not consist of "personal recommendations" etc. about the petitioners but rather could be characterized as the "personal recommendations" of the petitioners about the calling of a commission of enquiry 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:

21.__(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), I note that in his representations, the appellant stated that:

Section 180 of The Municipal Act provides that the Minister may recommend that a Commission issue to inquire into the affairs of any municipality. He can do so on the strength of a written Petition of fifty ratepayers of that municipality as contemplated by Section 180(2) of the Municipal Act. It is important that this decision of the Minister, once the Commission has made its report public, be subject to public scrutiny. In the alternative, a Minister may conceivably proceed on an unchecked basis to set up Commissions of Inquiry into any municipality he chooses

since he would never be called upon to make public the list of at least fifty rate payers of that municipality. Therefore, such possible arbitrary action can only be prevented by publication of the names of the Petitioners.

If the list of Petitioners is not made public, how can anyone determine the validity of the list? How do we know that all of those names are in fact ratepayers and not fictitious names?

Preventing publication of the list of the names of the Petitioners may lead to fraud without scrutiny.

Once the report of the Commission is published, it becomes a matter of public record. So should the names of the Petitioners become a matter of public record.

These submissions offer, in my view, a persuasive statement of a public interest in disclosure of this information. 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, R.S.O. 1980, chapter 302 provides in section 180 that in response to a petition signed by not less than fifty 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 the circumstances, then, I am satisfied that disclosure of the names of petitioners would not constitute an unjustified invasion of their personal privacy. Indeed, so clear is the case in favour of disclosure that 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.

I therefore order the institution to release the names of the petitioners listed on all four pages of the record within 20 days of the date 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: _____ June 4, 1990
John D. McCamus Date
Inquiry Officer