



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

## **ORDER P-240**

Appeal 900053

Ministry of Colleges and Universities



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## O R D E R

### BACKGROUND :

On November 9, 1989, a student wrote to the Ministry of Colleges and Universities (the "institution") to request "copies of the four letters of recommendation that were written on my behalf when I applied for the Ontario Graduate Scholarship".

The institution decided to grant access to these records which were titled "Ontario Graduate Scholarship Program 1987-88" and which were prepared by some of the student's professors. One of the professors appealed the head's decision to grant access to the record which he had prepared. Notice of the appeal was sent to the appellant, the institution and the student.

By letter, the appellant, the institution, and the student were notified that an inquiry was being conducted to review the decision of the head. During the course of the appeal, the Council of Ontario Universities requested permission to make representations pursuant to section 52(13) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") as the Council had an interest in the outcome of the appeal.

Representations were received from the institution and from the Council of Ontario Universities. The student did not make any representations.

Although the appellant did not make formal representations in response to the Notice of Inquiry, I have considered the very useful information which he provided to this office at various times during the course of the appeal.

An Appeals Officer assigned to the case obtained and examined the record at issue in this appeal, which is a single page printed form designed by the institution. The form, which is titled "Ontario Graduate Scholarship Program 1987-88", includes a checklist for the professor to rank the student and to provide comments. The form is described as a "Confidential report from the professor most familiar with the candidate's work" (emphasis added). The report in this case is dated September 26, 1986.

The report is referred to by the student and the appellant as a letter of recommendation while the institution and the Council of Ontario Universities have more correctly referred to it both as an assessment and as a report. Much of the confusion concerning the correct name for the record may have arisen because, in previous years, the report was subtitled "Confidential Letter of Recommendation".

**PRELIMINARY ISSUE:**

The appellant has indicated that the copy of the report which he completed included the words "confidential report". On this basis, he was led to believe that it would be kept confidential and not disclosed to the student. He is of the view that since the Act was not in effect at the time he submitted the report to the institution, his expectation of confidentiality should be respected.

Section 70 of the Act provides that:

This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force.

This provision indicates that the Act was intended to apply to all records in the custody or under the control of the institution including those records which were created before the Act came into force. As the student's request relates to a record which is clearly in the custody of the institution, the decision respecting disclosure of the report must be made in accordance with the provisions of the Act.

**ISSUES:**

The remaining issues which arise in this appeal are as follows:

- A. Whether the information contained in the report qualifies as "personal information" as defined in subsection 2(1) of the Act and if so, whose personal information it is.
- B. If the answer to Issue A is yes, whether the disclosure of the personal information would constitute an unjustified invasion of the personal privacy of the person to whom the information relates.

**SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in the report qualifies as "personal information" as defined in**

**subsection 2(1) of the Act and if so, whose personal information it is.**

In all cases where the request involves access to personal information, it is my responsibility, before deciding whether any exemption claimed by any of the parties applies, to ensure that the information in question falls within the definition of "personal information" contained in section 2(1) of the Act. Where information does qualify as personal information, I must then determine to whom the personal information relates.

The definition of personal information contained in section 2(1) of the Act provides, in part, that:

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

...

- (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 nub of the appellant's position, though not phrased precisely in this fashion, is that subparagraph (f) of the definition of personal information should apply because the report is correspondence of a private or confidential nature sent by him to the institution. As I have previously indicated, the record in this case is a pre-printed form soliciting a professor's views

concerning a particular student. The report was prepared by the appellant, who entered check marks to indicate his ranking of the student in the categories provided and then entered his written comments in the space provided. Bearing in mind the objectives of this form, and the manner in which it is laid out, I believe that the document can best be described as a report rather than correspondence. On this basis, I am of the view that subparagraph (f) does not apply.

In order to determine whether the report contains personal information and to whom the information relates, I have considered the report in three parts, according to the nature of the information which it contains:

Part A - the student's name and social insurance number, the name of the university at which the student was registered, and a numerical code representing the student's intended discipline.

Part B - a checklist for the professor to rank the student in comparison with other students (8 criterion are specified), the professor's comments about the student, the length of time as well as the capacity in which the professor had known the student, and another checklist for an overall ranking of the student by the professor (9 levels from C- to A+).

Part C - the professor's name, signature, title, department, university, and the date that the report was signed.

In my view, the application of subparagraphs (c) and (h) of the definition of personal information leads to the conclusion that the information in Part A (the student's name, social insurance number, and discipline code) is that of the student while the information in Part C (the appellant's name, signature, title, department, and employer) is that of the appellant.

Part B consists of the appellant's comments about the student as well as the appellant's opinions of how the student ranks in relation to other students. Subparagraphs (e) and (g) of the definition of personal information must be considered in reaching a determination of whose personal information is contained in Part B.

Subparagraph (e) provides that the personal views or opinions of an individual ("X") are his/her personal information except where those views or opinions relate to another individual ("Y"). Subparagraph (g) provides that X's views or opinions about Y are the personal information of Y. As indicated

earlier, the information contained in Part B of the report represents the appellant's views and opinions about the student. Since the personal views and opinions as expressed by the appellant relate to the student, it follows that the information in Part B of the report is the personal information of the student.

Under section 47 of the Act, the student as a requester has a right of access to any personal information about her which is in the custody or under the control of an institution. I have found that the information in Parts A and B of the report is the personal information of the student and not the appellant. Since the student has a right of access, and because the institution's decision was to grant access to those parts of the report, I uphold the institution's decision to grant the student access to Parts A and B of the report.

In determining this issue, I have also considered whether section 49(c) of the Act might apply to the record. Section 49(c) provides that:

A head may refuse to disclose to the individual to whom the information relates personal information,

- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits where the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;



In its submissions, the institution submitted that section 49(c) did not apply since disclosure of the information contained in Parts A and B of the record would not reveal the identity of a confidential source. This was the case because the student had directly approached the appellant to ask that he provide the report. Therefore, the appellant, having agreed to provide the reference, could not reasonably have expected that his identity would be kept from the student. I agree with the institution's view that section 49(c) does not apply.

On a different point, the appellant has suggested that the disclosure of the report could have a "chilling effect" in that university professors could become reluctant to provide assessments. He suggests that the knowledge that such assessments could be subject to disclosure, could mean that in the future, these assessments will be prepared in a manner which will lack candour. The Council of Ontario Universities made essentially the same point, expressing the view that assessments are more honest and fair when provided in confidence.

Both the appellant and the Council of Ontario Universities are suggesting that the evaluative and opinion material provided by professors should be kept in confidence given the need for candour when assessing students. However, in my view, if the Legislature

had intended that evaluative information of this sort should not be subject to disclosure section 49(c) would have been worded differently. The current wording of the Act only protects the disclosure of information where it is evaluative or opinion material and where it was provided by a confidential source.

**ISSUE B: If the answer to Issue A is yes, whether the disclosure of the personal information would constitute an unjustified invasion of the personal privacy of the person to whom the information relates.**

The information in Part C of the report (the appellant's name, signature, title, department and employer) must be considered separately, since I have found that this information is the personal information of the appellant.

Once it has been determined that a record or part of a record contains personal information, section 2(1) of the Act prohibits, except in certain circumstances, the disclosure of this personal information to any person other than the individual to whom the information relates. One such circumstance is contained in section 21(1)(f) of the Act which states:

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.

Guidance is provided by sections 21(2) and 21(3) of the Act with respect to the determination of whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(3) identifies types of personal information where disclosure is presumed to constitute an unjustified invasion

of personal privacy. In my view, the presumption contained in section 21(3)(d) is the only one which might apply in the circumstances of this appeal. This subsection provides:

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.

The information in Part C of the report includes information relating to the appellant's employment, in that it discloses the name of his employer and his position with that employer. However, in my view, this information does not relate to his employment history but rather to his current employment. Therefore, the presumption does not apply.

Section 21(2) sets out a non-exhaustive list of circumstances which may be considered in determining whether disclosure of personal information constitutes an unjustified invasion of personal privacy. In particular, sections 21(2)(f) and (h) provide:

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;
- (h) the personal information has been supplied by the individual to whom

the information relates in  
confidence;

While the appellant has objected to the disclosure of the entire report, he has acknowledged that his primary concern is not the disclosure of his name, since the student quite clearly knows his name, title and position, having asked him directly to provide the report to the institution. Rather, his concerns centre around the contents of Part B of the report, which I have already found to be the student's personal information.

The institution submits that the appellant's name, title, department, university affiliation, and the degrees awarded to him have in any case been made public since this information is included in the university's calendars.

The appellant is also concerned that the student wants access to the report for a purpose other than that for which it was prepared. He feels that it would be wrong of the student to use the report for any purpose other than the purpose for which it was intended. Accordingly, the student should not be given access to it. While I understand the appellant's concern relating to the use of the report, the Act does not provide that a requester's reasons for making an access request are relevant to the consideration of whether access should be granted. An individual is free to use any record to which he or she has been granted access as he or she chooses.

In my view, the disclosure to the student of the personal information contained in Part C of the report would not constitute an unjustified invasion of the appellant's personal privacy. I therefore uphold the head's decision to grant access to the student to Part C of the report.

**ORDER:**

1. I uphold the decision of the head to disclose the entire report to the student.
2. I order the head not to disclose the report until thirty (30) days following the date of the issuance of this Order. This time delay is necessary in order to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the report is actually disclosed.
3. Provided that notice of an application for judicial review has not been served on the institution and/or my office within this thirty (30) day period, I order that the report be disclosed within thirty five (35) days of the date of this Order.
4. I order the head to notify me in writing within five (5) days of the date on which disclosure is made. This notice should be sent to my attention c/o Information and Privacy Commissioner/Ontario at 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original signed by: \_\_\_\_\_  
Tom Wright  
Commissioner

September 6, 1991  
Date