



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

# **ORDER 27**

**Appeal 880059**

**Ministry of Labour**



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Appeal Number 880059

**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) a right to appeal any decision of a head under the Act to the Commissioner.

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

1. On February 4, 1988, the administrators of various union trust funds were given third party notices by the Ministry of Labour (the "institution") indicating that a request for access to certain financial statements filed by the trust funds with the institution had been received. Many of the trust funds retained the appellant, who is a lawyer, to represent them.
2. In order to make submissions on behalf of his clients, the appellant sought to determine the identity of the person(s) requesting access. This information was denied by the institution in a telephone conversation on February 19, 1988. Consequently, the appellant submitted a written access request on February 23, 1988 requesting "...the identity of the individual(s) who seek(s) access to financial statements pertaining to the Funds, which have

been filed with the Ministry of Labour under s.86(2) of the Labour Relations Act".

3. Upon receipt of the request, the institution consulted the original requester to seek his consent. Consent was not forthcoming and on March 22, 1988, the Freedom of Information Co\_ordinator for the institution wrote to the appellant, denying the request "...since it would reveal personal information". A clarifying letter dated April 20, 1988 from the institution to the appellant indicated that "...disclosure of such personal information is prohibited pursuant to section 21(1) of the Act".
4. On March 30, 1988, the appellant wrote to me appealing the decision of the institution and I gave notice of the appeal to the institution.
5. The Appeals Officer assigned to this case initially raised the issue of whether the appellant had "requested access to a record" pursuant to subsection 50(1)(a) of the Act. On consent of all parties, the appeal proceeded on the basis that the request was for a copy of Ministry of Labour Freedom of Information Request #00002 for the purpose of obtaining the identity of the requester therein. Subsequently, the appellant received a copy of Request #00002 with identifying information severed.
6. Attempts to mediate a settlement in this appeal were unsuccessful and on May 13, 1988, I issued notices of inquiry to the appellant, the institution and an affected person (the original requester, whose identity had not been

revealed), enclosing a copy of the Appeals Officer's Report.

7. Written representations were received from the appellant and the institution. No representations were received from the affected person (the original requester).

The issues arising in this appeal are as follows:

- (A) Whether the name of the original requester is "personal information" as defined in subsection 2(1) of the Act.
- (B) If the answer to Issue A is in the affirmative, whether disclosure of the name of the original requester would constitute an unjustified invasion of personal privacy under section 21 of the Act, in the circumstances of this appeal.

Before dealing with the above issues, I will address a procedural argument raised by the institution in support of its justification to refuse disclosure of the requester's name.

The thrust of the institution's argument is that the Act provides a complete code of procedure and, because there is no stated obligation on the institution to disclose the name of a requester, the principles of natural justice are not breached by failure to do so. I do not accept this argument.

While it is true that various provisions of the Act set out procedures to be followed by institutions in dealing with requests for information, the Act does not address every aspect

of procedure. Among other things, the Act is silent as to whether the name of an individual requester should be withheld from disclosure. However, in my view, this silence should not be interpreted as creating a prohibition.

Having found that the Act does not specifically or impliedly impose a general rule of non\_disclosure of the names of requesters, I must now consider whether such a disclosure would be inconsistent with the terms of the Act. In my view, the decision as to whether the name of a requester will be disclosed

should be governed by the substantive provisions of the Act relating to the disclosure of information. Each case must be considered on its facts, and the decision whether or not to release a requester's name may vary from case to case depending on the circumstances of each particular appeal.

I will now deal with the substantive issues raised in this appeal.

**ISSUE A: Whether the name of the original requester is personal information as defined in subsection 2(1) of the Act.**

At the outset, it should be noted that the appellant originally requested the "identity" of the original requester, but has since narrowed the scope of the request to only the name of the original requester and not the person's address and telephone number.

Subsection 2(1) of the Act defines "personal information" in the following manner:

"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.

In my view, if the record at issue contained only the name of an individual, it could not be considered "personal information" according to the subsection 2(1) definition. A name alone

cannot be considered "recorded information about an identifiable individual" (emphasis added). This interpretation is supported by subparagraph (h) of the definition of personal information which includes the name of an individual within the definition of personal information "...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".

However, in this case, the name does not appear alone, but in the context of a request for information. In the circumstances of this case, disclosing the name would reveal both (a) the fact that an identifiable individual made a request under the Act, and (b) the nature of the request. In my view, this renders the name of the requester "personal information" as defined by the Act.

**ISSUE B: If the answer to Issue A is in the affirmative, whether disclosure of the name of the original requester would constitute an unjustified invasion of personal privacy under section 21 of the Act, in the circumstances of this appeal.**

Subsection 21(1)(f) of the Act allows the head to disclose personal information to a person other than the individual to whom the information relates if the disclosure does not constitute an unjustified invasion of personal privacy.

Subsection 21(2) of the Act lists various criteria which must be considered when determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy within the meaning of subsection 21(1)(f). Subsection 21(2) reads as follows:

(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.

In referring to subsection 21(2)(a), the institution submits that disclosure of a requester's name would discourage people from requesting records under the Act. The institution argues that "...it is possible, if not likely, that the government will be subject to less public scrutiny if the names of requesters are released". In the absence of some empirical evidence to support this view, I cannot accept that the public will refrain from applying for information from the government simply because



there is a possibility that their names will be disclosed to someone else who has an interest in or is affected by the request.

In my view, an individual requester must appreciate that where others have an interest in the issue of whether the record may be disclosed (whether it be a personal or economic interest) they will often want to know the name of the requester. As I noted at the outset, my approach to the question of whether a requester's name may be disclosed to a person affected by the request is to consider whether the disclosure of the name can be done in accordance with the provisions of the Act. This approach, which involves the weighing of any competing rights of the requester and third parties or affected persons is, in my view, the fairest one to take.

The appellant submits that "...knowledge of the Name is necessary and relevant to a fair determination of our clients' rights in dealing with the first request and Appeal No. 880036, pertaining to the financial statements of our clients. The defences which our clients can raise in this other proceeding may depend very much on the Name". The appellant in making this argument invokes natural justice and procedural fairness.

It would appear that the concepts of natural justice and procedural fairness are the underpinnings of subsection 21(2)(d) of the Act. In relation to subsection 21(2)(d), the institution submits that it "...has no application to third party proceedings under this Act, which has been exhaustively dealt with under section 28". (Section 28 deals with the procedure for notice to "affected person".)

Alternatively, the institution argues that "...even assuming that the Head's decision on the access request of the requester is a 'determination of rights' affecting the appellant within the meaning of subsection 'd', the entitlement of the requester to information must be determined by the head on general principles. The head is not entitled to consider whether or not a requester has a sufficient interest to allow access to information, because the Act creates a general right of access for 'every person'".

I disagree with the appellant insofar as he suggests that he needs to know the name of the requester in Appeal No. 880036 in order to properly argue that appeal. To date, the institution has not been required to respond to the request for information from the requester in Appeal No. 880036. The only issue currently before me in that appeal is a preliminary one: whether section 86 of the Ontario Labour Relations Act is to be considered a "confidentiality provision" for the purposes of section 67 of the Freedom of Information and Protection of Privacy Act, 1987. It is clear that the appellant does not require the name of the requester in order to adequately address this preliminary issue.

The institution also raises the possible application of subsection 21(2)(e). Because the institution holds information pertaining to employers and employees, it is concerned that

employees seeking information may be vulnerable to sanction from employers. In the absence of protection from reprisals for requesters under the Act, the institution argues that the identity of a requester should be treated as implicitly confidential.

I am willing to accept the institution's argument that the disclosure of the name of a requester might, in some instances, cause difficulty to the requester. However, I am unwilling to impose a blanket rule of non\_disclosure based on that reason. I am satisfied that subsections 21(2)(e), (f) and (i) adequately address this possibility, and permit the refusal to disclose a requester's name in appropriate circumstances. In the circumstances of this case, there is no evidence to suggest that these protective provisions should apply.

The next argument raised by the institution concerns the nature of any expectations of confidentiality on the part of the original requester.

Requests for information under the Freedom of Information and Protection of Privacy Act, 1987, are usually made on Forms 1 and 2 set out in Ontario Regulation 532/87, as amended. Neither of these forms contain any provision indicating that the identity of the requester will be held in confidence. In this case, the original requester made his request by letter, so presumably did not see the official form. However, his letter did not request that the information be kept confidential.

The institution advises me that the original requester, after filing his request, indicated that he did not wish his name to be divulged to the appellant. However, I find it significant that, despite the fact that the original requester was notified of the appeal and given an opportunity to provide written submissions, he declined to provide any representations respecting the issues before me in this appeal.

Having considered all of the relevant provisions of section 21 of the Act, I am of the view that disclosure of the original requester's name, in the circumstances of this appeal, would not result in an unjustified invasion of the requester's privacy, as claimed by the institution. Accordingly, I order that the institution disclose the information under appeal, that is the name of the requester in Request #00002, within seven (7) days of the date of this Order. The institution is further ordered to advise me in writing, within five (5) days of the date of disclosure, of the date on which disclosure was made.

Original signed by: \_\_\_\_\_  
Sidney B. Linden  
Commissioner

November, 2, 1988  
Date