



**Information and Privacy
Commissioner/Ontario**

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

ORDER 156

Appeal 890328

Ministry of Labour



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/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

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, as amended, (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 August 25, 1989, the requester wrote to the Ministry of Agriculture and Food seeking access to:

Any and all information retained by this Ministry on TEMPCO SERVICES LIMITED, a corporation supplying temporary help to branches of this Ministry.

2. On September 22, 1989, the Ministry of Agriculture and Food received written clarification from the requester that the request was to include, among other things, "any complaints filed with the Ministry associated with Tempco Services Ltd."
3. On October 4, 1989, the Ministry of Agriculture and Food transferred two records which related to the request to the Ministry of Labour pursuant to subsection 25(2) of the Act.
4. On October 20, 1989, the Freedom of Information and Privacy Co-ordinator for the Ministry of Labour (the "institution") responded to the request in the following manner:

Since both of these documents involved an Employment Standards Act matter, it was decided that the Ministry of Labour has the greater interest in the documents and, therefore, ought to respond to this portion of your request.

Each of the documents contains personal information and it was our preliminary view that disclosure of the documents could result in an unjustified invasion of the personal privacy of the individual in question. Before deciding this question, I spoke to the individual to determine whether or not we could get consent to release the documents. The individual did not want the information disclosed. This reinforced our initial impression that disclosure of the information would involve an unjustified invasion of personal privacy.

5. On October 31, 1989, my office received an appeal from the decision of the institution. I gave notice of the appeal to the institution and the appellant on November 1, 1989.
6. The Appeals Officer obtained and reviewed the requested records at issue in this appeal. The records, which have been withheld in their entirety, consist of the following:

Record 1. A one page letter dated July 11, 1989 from [a named individual] to the Director, Employment Standards Branch with respect to a claim against Tempco Services Limited.

Record 2. A two page letter dated September 14, 1989 from D. Kaupp, Employment Standards Officer to the Ministry of Agriculture and Food with

respect to [the named individual's] claim for wages and vacation pay against Tempco Services Limited.

7. The Appeals Officer contacted the person to whom the requested records relate and who might be affected by the release of the records (the "affected person"), to determine whether mediation was possible. The affected person continued to object to the disclosure of the records.

8. As mediation of the appeal was unsuccessful, notice that I was conducting an inquiry to review the decision of the head was sent to the appellant, the institution and the affected person on January 4, 1990. 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.

9. Written representations were received from the appellant, the institution and the affected person. I have considered all representations in making this Order.

The issues arising in this appeal are as follows:

- A. Whether the requested records 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 requested records 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 records 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 outline briefly 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. In this case, the burden of proving the applicability of the section 21 exemption lies both with the head and the affected person as they are the ones resisting disclosure.

ISSUE A: Whether the requested records 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 the 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 requested records shows that they contain the name, home address and home telephone number of the affected person. Information related to the affected person's employment history with Tempco Services Ltd., for example name of employer, rate of pay and hours worked for a specific time period for which wages are owed, is also indicated in the requested records. Therefore, in my view, the requested records contain information which falls within the definition of personal information under subsections 2(1)(b), (d) and (h) of the Act.

ISSUE B: If the answer to Issue "A" is in the affirmative, whether disclosure of the requested records 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(1)(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(3) sets out a list of the types of personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. I discussed the proper application of subsection 21(3) in Order 20, (Appeal Number 880075) dated October 7, 1988. At page 8 of that Order I stated:

[Subsection 21(3)] specifically creates a presumption of unjustified invasion of personal privacy and in so doing delineates a list of types of personal information which were clearly intended by the legislature not to be disclosed to someone other than the person to whom they relate without an extremely strong and compelling reason.

Subsection 21(3)(d) of the Act reads as follows:

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;

I have already found that employment-related information in these records is personal information, because the identity of the affected person is clear. Namely, the employment-related information appears with the affected person's name, home

address and home telephone number, all of which are personal identifiers.

Having reviewed the requested records and the representations of the appellant, the institution and the affected person, I find that disclosure of the personal information of the affected person in the requested records at issue in this appeal would reveal the affected person's employment history and as such, would constitute a presumed unjustified invasion of the affected person's personal privacy pursuant to subsection 21(3)(d) of the Act.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy under subsection 21(3) have been satisfied, I must then consider whether any other provision of the Act comes into play to rebut this presumption. In my Order 20, supra, I outlined some of the situations in which the presumption provided by subsection 21(3) might be rebutted. At page 9 of that Order, I stated:

It is clear that the types of information listed in subsection 21(4) operate to rebut the presumption set out in subsection 21(3). The application of section 23 of the Act, which provides that an exemption from disclosure of a record under, amongst other sections, section 21 "does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption" may also result in disclosure. A further instance that is clear arises when a type of information listed under subsection 21(3) also triggers section 11 of the Act, which obliges the head to disclose any record "if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public".

I believe that it is premature at this stage of the development of the Act to state that only the application of subsection 21(4), section 23 and section 11 can be effectively rebut the presumptions set out in subsection 21(3). It could be that in an unusual case, a combination of the circumstances set out in subsection 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view, such a case would be extremely unusual.

In the present case, I find that the presumption of an unjustified invasion of the affected person's personal privacy has not been rebutted.

I might add that, quite independently of the employment-related information, in the circumstances of this appeal, I find that disclosure of the affected person's name, home address and home telephone number would constitute an unjustified invasion of the affected person's personal privacy under subsection 21(2) of the Act.

Therefore, in my view, the requested records must be withheld from disclosure under the mandatory exemption provided by subsection 21(1) of the Act.

ISSUE C: Whether the requested records 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 requested records would be an unjustified invasion of the affected person's personal privacy, I have also reviewed the records with a view to determining whether they can reasonably be severed 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, I 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 requested records, I find that it is possible to reasonably sever the personal information that falls under the section 21 exemption. Along with this Order, I have provided the head with a copy of the requested records with the severances which I feel are appropriate.

In summary, I order the head to sever the requested records, as indicated in the copy of the records I have provided to the head, and to disclose the remaining parts of the records to the appellant. I further order the head not to disclose to the appellant the remaining parts of the records until twenty (20) days following the date of this Order. This time delay is necessary in order to give the affected person the opportunity to apply for judicial review of my decision before the remaining parts of the records are actually disclosed to the appellant. Provided notice of an application for judicial review has not

been served on me and/or the institution within the twenty (20) day period, I order that the remaining parts of the record be disclosed to the appellant within twenty five (25) days of the date of this Order. The head is further ordered to advise me in writing as to the date of such disclosure within five (5) days of the date on which disclosure is made to the appellant.

Original signed by: _____
Sidney B. Linden
Commissioner

_____ March 22, 1990
Date