



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

# ORDER 20

Appeal 880075

Ministry of the Attorney General



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>

Appeal Number 880075

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 me.

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

1. On February 4, 1988, the Ministry of the Attorney General (the "institution") received a request from the appellant for access to:

"1. Rating of the successful candidate for the job competition #AG\_1076B.

2. Results of Data Entry for myself and the other successful candidate held in reference to job competition #AG\_1076B.

3. Any other relevant information which was considered in determination of the successful candidate in job competition #AG\_1076B.

4. Rating (for myself and successful candidate) by A. Lomangino who was present at the interview for

job competition #AG\_1076B. If not rating, a copy of her comments should be provided".

2. By letter dated March 3, 1988, the Freedom of Information Co\_ordinator for the institution wrote to the appellant advising that "access has been granted to the following records: results of your Data Entry test, relevant information considered in determining the successful candidate such as suggested questions and answers and selection criteria; your own evaluations, and rating in the competition". The appellant was further advised by the institution that the request for the rating of the successful candidate for the job competition and the results of the Data Entry test for the successful candidate were denied under subsection 21(3)(g) of the Act. The letter stated that the records consist of personal recommendations or evaluations, the disclosure of which would constitute an unjustified invasion of personal privacy.

The appellant was also advised that access to the ratings/comments by A. Lomangino for the job competition could not be provided because the record did not exist.

3. On April 7, 1988, the appellant wrote to me appealing the decision of the head. I gave notice of this appeal to the institution.
4. Between April 7, 1988 and June 15, 1988, the records relevant to this appeal were obtained and reviewed and the Appeals Officer attempted to effect a settlement in the matter. During this period, the appellant indicated that

the appeal did not involve the decision that the record pertaining to request item #4 does not exist. The successful candidate, as a person affected by the appeal, was also given notification of the appeal in accordance with subsection 50(3) of the Act.

5. On June 27, 1988, notice that I was conducting an inquiry to review the decision of the head was sent to the institution, the appellant and to the person affected by the appeal. By letter dated July 13, 1988, I advised the parties that I had decided to deal with the matter by way of written representations and requested that they submit their representations to my office by August 15, 1988. I have received written representations from all the parties concerned.

The issues arising in this appeal are as follows:

- A. Whether the ratings and test results are "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 personal information would be an unjustified invasion of the personal privacy of an individual.
- C. Whether the records can reasonably be severed under subsection 10(2) of the Act without disclosing information that falls under the exemption.

The purpose of the Act as set out in section 1 should be noted at the outset. 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. The 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.

It should also be noted that section 53 of the Act provides that the burden of proof that the record or part of the record falls within one of the specified exemptions of the Act lies upon the head.

The records at issue in this appeal are:

(1) Interview Rating Sheet:

This document contains information relating to the following:

Job competition number; position title; interviewer's name; names of candidates interviewed; three main selection criteria (proven experience, aptitude and knowledge, interpersonal skills); the maximum numerical point scores awarded for each criterion, a breakdown of each main criterion into two or more individual criteria and the maximum numerical point scores assigned to each individual criterion; the total maximum numerical score for all criteria; names of individual candidates interviewed; remarks of the

interviewer about each candidate relative to each individual criterion; numerical point scores awarded by the interviewer to each candidate relative to each individual criterion and the total points scored by each candidate (the sum of the individual scores assigned to each individual criterion).

(2) Data Entry Test Result Sheet:

This document contains information relating to the following:

The name of the person who completed the sheet, the names of the candidates; the "key entry record count" for each candidate and the "error count" for each candidate. Attached to this is a sheet showing the names of the

candidates, the "key entry record count" for each candidate expressed in percentages, the "error count" for each candidate expressed in percentages, certain calculations and a numerical point score assigned to each candidate for the tests and the maximum point score for the test.

**ISSUE A: Whether the ratings and test results are "personal information" as defined in subsection 2(1) of the Act.**

In subsection 2(1) of the Act personal information is defined as follows:

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

- (a) information relating to 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 head submits that the interview rating sheet forms the basis of evaluating an employee's verbal presentations of his or her employment history and personal attributes and represents an evaluator's assessment of an individual candidate's experience, skills and abilities in relation to the specific requirements of

a position. Thus in the head's submissions, the contents of the interview rating sheet contain personal information about individual candidates, since the completed sheets contain subjective comments by the interviewers about the candidates as well as a numerical score assigned to each candidate for each of the selection criteria which constitute the interviewer's views or opinion about each candidate. The head therefore concludes that the comments and the numerical scores fall within the definition of "personal information" under subsection 2(1)(g) of the Act since they reflect the "views or opinions of another individual about the individual", in this case, the views or opinions of the interviewer about the candidate.

The head also argues that the "Data Entry test scores fall under the same category because they contain a subjective evaluative component to reflect the interviewer's evaluation of relevant factors affecting the validity of the raw scores; for example a candidate's familiarity and experience with the type of equipment and sample data used for conducting the test".

The appellant has not made any representation with respect to this issue. I understand that the appellant knows the successful candidate personally and will be able readily to identify the person to whom the information relates even if the name of the candidate is severed from the record.

While it may be questionable whether or not the Data Entry test results reflect the "views or opinions of another individual about the individual", in my opinion, there is no question that both the ratings and the test results are "recorded information about an identifiable individual" and as a result fall within the definition of personal information contained in the Act.



**ISSUE B: If the answer to Issue A is in the affirmative, whether disclosure of the personal information would be an unjustified invasion of the personal privacy of an individual.**

The head submits that "this fact situation does not fall within any of the exceptions set out in section 21(1), and that accordingly the head is required to refuse to disclose to the requester personal information pertaining to the successful candidate in this job competition, pursuant to section 21 of the Act". Further, the head submits that the disclosure of the personal information is presumed to constitute an unjustified invasion of personal privacy of the successful candidate pursuant to subsection 21(3)(g) of the Act as the records consist of personal recommendations or evaluations, character references or personal evaluations.

The appellant on the other hand states:

"as I was declared an unsuccessful candidate in the competition the release of the requested information would not cause an unjustified invasion. I am not a third party but a party who is directly affected by this decision. If there is fairness there is nothing to hide. This information affects my future action and as such to protect my rights, it is important I get this information. Unless I am provided this

information, it is not possible for me to understand which areas of the competition, the successful candidate did better. It would also indicate whether

I was fairly treated in all areas by the interview panel"

Subsection 21(3)(g) states:

"A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personnel information,

-----

(g) consists of personal recommendations or evaluations, character references or personnel evaluations".

The word "evaluate" (evaluation) as defined by the concise Oxford Dictionary, means "ascertain amount of; find numerical expression for; appraise, assess". Having examined the contents of the records in question, I have no difficulty in concluding that both the ratings and test results consist of the "personal evaluations" of the candidates.

Subsection 21(3) of the Act sets out a list of the types of personal information, the disclosure of which is to be presumed to constitute an unjustified invasion of personal privacy. Clearly subsection 21(3) is very important in terms of the privacy protection portion of the Act. It 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.

Are there situations in which the information listed in subsection 21(3) might be disclosed to someone other than the person to whom they relate? The Act is not entirely clear on

this point, but I feel that it is important for those who will be administering the Act that I set out what I understand to be the legislative guidelines.

It is clear that the types of information listed in subsection 21(4) operate to rebut the presumptions 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, among 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 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 do not find that the presumption of an unjustified invasion of personal privacy has been rebutted.

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

The institution has already disclosed to the appellant portions of the records that do not disclose personal information about other candidates \_ such as the name of the interviewer, the selection criteria and maximum points assigned to each criterion. In its submissions, the institution has indicated that it is also "willing to release to the appellant the total score awarded for the successful candidate, as opposed to the scores broken down for each individual assessment criterion, as it is felt that release of the total score would not reveal the interviewer's subjective evaluations of the successful candidates skills and abilities".

The successful candidate submits:

"I feel that under no circumstances should any of the requests pertaining to my rating and test results be granted to the appellant, as it would be a violation of personal privacy. I was told that interview and any results from my testing would be confidential and it would remain so".

It appears that the head's position is that the disclosure of the total scores does not offend the presumption of unjustified invasion under subsection 21(3)(g) of the Act and the record should be severed to disclose this information. In my view, whether or not the total score reveals the interviewer's subjective evaluations of the successful candidate's skills and abilities, the information is still personal information by definition as it is "recorded information about an identifiable individual". Once the information is personal information by definition, the mandatory provisions of subsection 21 apply when

a request is received from a person to whom the personal information does not relate. As discussed above, the total score is a "personal evaluation" within the meaning of subsection 21(3)(g) and as such, its disclosure is presumed to constitute an unjustified invasion of the personal privacy of the successful candidate. Accordingly, the information in question, being the total score, falls under one of the exemptions and cannot be reasonably severed pursuant to subsection 10(2) of the Act.

My Order is therefore, to uphold the decision of the head and to dismiss the appeal.

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

\_\_\_\_\_ October 7, 1988  
Date