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

ORDER P-328

Appeal P-910957

Ministry of the Solicitor General

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ORDER

BACKGROUND:

The Ministry of the Solicitor General (the institution) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the following information which relates to a job competition for the position of Policy Development Officer:

> In respect to competition for employment File No. SG-321,
>
> 1.0 All curricula vitae, resumes, or applications received by the Ministry of the Solicitor General for this competition.
>
> 2.0 Those curricula vitae, resumes, or applications of the applicants invited for an interview.
>
> 3.0 The curricula vitae, resumes, or applications of the two successful applicants.
>
> 4.0 All material relating to the criteria used in selecting applicants for an interview in this competition.
>
> ...
>
> The purpose of this request is to determine whether the hiring practices of the Ministry of the Solicitor General are in compliance with the employment equity program, the Ontario Human Rights Code, and the Canadian Charter of Rights and Freedoms.

The record is 1220 pages in length. It consists of the advertisement and the job description for the position of Policy Development Officer; the offers and conditions of employment of the two successful candidates; a 15-page "Qualifying Guide", which lists the selection criteria for the 235 applicants; and the applications and resumes of all applicants, including the candidates selected for an interview, the two successful candidates, and the requester.

The institution initially responded to the request by providing the requester with a fee estimate in the amount of $545.00. The requester appealed this decision. However, the institution subsequently issued a revised decision in which all fees were waived, and the requester was provided with access to 34 pages of the record in whole, and partial access to an additional 17 pages.

Access to the remaining portions of the record was denied pursuant to sections 13(1), 21(2)(f) and (h), and 21(3)(a), (d), (g) and (h) of the Act.

The requester appealed the institution's new decision.

During the course of mediation, the scope of the appeal was narrowed. The appellant informed the original Appeals Officer that he was no longer interested in receiving the portions of the record which were subject to exemption under section 13(1), or two of the 17 pages to which partial access had been granted. In addition, it was determined that 60 of the pages to which access had been totally denied were duplicates. Further, in my view, the portions of the record which consist of the offers and conditions of employment of the two successful candidates are not covered by the request and fall outside the scope of this appeal. As a result, the record at issue has been reduced to 1101 pages, and consists of the applications and resumes of all the applicants, except the appellant's own personal information, and the severed portions of the 15-page Qualifying Guide.

During the course of reviewing the record, the original Appeals Officer determined that some of the information contained in the record relates to current employees of the Office of the Information and Privacy Commissioner/Ontario (the IPC). In accordance with the IPC "Policy and Procedures for Employees Using the IPC Acts - Appeals Involving an IPC Employee", the Assistant Commissioner assumed responsibility for the appeal in the capacity of Temporary Appeals Officer. All parties to the appeal were informed of this development.

Further attempts to mediate this appeal were not successful, and the matter proceeded to inquiry. Notices of Inquiry were sent to the appellant and the institution, together with an Appeals Officer's Report, intended to assist the parties in making representations concerning the subject matter of the appeal. Written representations were received from both parties.

ISSUES:

A. Whether the information contained in the record qualifies as "personal information", as defined in section 2(1) of the Act.

B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to any portion of the record.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the record qualifies as "personal information", as defined in section 2(1) of the Act.

The definition of "personal information" found in section 2(1) of the Act states:

"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 his representations, the appellant indicates that "key identifiers", such as the names, addresses, telephone numbers, names of companies or educational institutions, ethnic origin and "similar tags" which might compromise personal privacy, could be severed from the record prior to release. In the appellant's view, if this information is severed from the record, the applicants would no longer be "identifiable individuals" under the definition of personal information. The appellant submits that "the remaining information would deal with work skills, education levels and related data which would speak to the competitiveness of all of the individual applicants and to those invited for an interview". In addition, the appellant withdrew his request that the unsevered information of the successful candidates be specifically identified as their information.

As far as the various applications and resumes are concerned, I find that the information which would remain, even if the categories of personal information identified by the appellant are severed, would still satisfy the requirements of the definition of personal information. In my view, applications and resumes by their very nature consist predominately of personal information, and I am not convinced that severance of certain categories of information such as those identified by the appellant would be sufficient to render the record no longer relating to "identifiable individuals".

However, with respect to the "Qualifying Guide", which appears at pages 29-43 of the record, I agree that if the names of the applicants together with certain identifying information under the "Comments" heading of the Guide and current place of employment, where it appears, are severed, then the contents of these pages are no longer information "about identifiable individuals", and the remaining information in the severed "Qualifying Guide" would no longer meet the requirements of the definition of personal information. Since section 21(1) is the only exemption claimed for the "Qualifying Guide", I find that portions of pages 29-43 of the record should be disclosed to the appellant. I have identified the information which should **not** be disclosed in "highlighting" on the copy of the "Qualifying Guide" which is being sent to the institution with this Order.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to any portion of the record.

Under Issue A, I found that the portions of the record which consist of the applications and resumes of the candidates qualifies as personal information.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this personal information, except in certain circumstances. One such circumstance is contained in section 21(1)(f) of the Act, which reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(2) provides a non-exhaustive list of criteria for the head to consider in making this determination, and section 21(3) identifies types of personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The institution claims sections 21(3)(a), (d), (g), and (h) of the Act as the basis for refusing to disclose the record. These sections state:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (d) relates to employment or educational history;
>
> (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
>
> (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

I have reviewed the remaining portions of the record and, consistent with previous orders (Orders 11, 97, 99, P-273, P-282 and M-7), I find that the personal information contained in the applications and resumes of all applicants, including the two successful applicants and the applicants who were selected for an interview, satisfies the requirements of the presumption contained in section 21(3)(d).

Having determined that the presumption of an unjustified invasion of personal privacy has been established under section 21(3)(d), I must now consider whether any other provisions of the Act come into play to rebut this presumption.

Section 21(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 21(3). In my view, the record does not contain any information relevant to section 21(4).

In Order 20, dated October 7, 1988, former Commissioner Sidney B. Linden stated that "... 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".

The appellant, in his submissions raises the factors outlined in sections 21(2)(a) and (d) as relevant considerations. These two sections read as follows:

> 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;
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

In his representations, the appellant submits that "there is no objective or independent method of ensuring that the hiring practices of the [institution] for the purpose of this competition have followed established principles and practices for fair and unbiased hiring". He adds that the "request speaks to the larger need to ensure that all citizens of Ontario can be provided with or obtain appropriate assurances that the hiring practices of their government are characterized by the highest integrity and follow established human resources goals and objectives while respecting the rights of all individuals who seek public employment".

I further note that in his original request the appellant indicated he was seeking access to the requested record "to determine whether the hiring practices of the [institution] are in compliance with the employment equity program, the Ontario Human Rights Code, and the Canadian Charter of Rights and Freedoms". He also submits that disclosure is relevant to a fair determination of his rights.

In Order P-273, dated February 20, 1992, Assistant Commissioner Tom Mitchinson dealt with a similar request involving a job applicant's resume which was found to satisfy the requirements of a presumed unjustified invasion of personal privacy under section 21(3)(d). At page 10 of that Order, the Assistant Commissioner outlined what he felt was necessary in order to rebut this presumption using sections 21(2)(a) and (d):

> In order to rebut this presumption using sections 21(2)(a) and (d), it is not sufficient for an appellant to claim that the information contained in the record should be disclosed in order to satisfy generalized concerns for public accountability in the job recruitment process, or unsubstantiated allegations that the information contained in the record is required to assist in the fair determination of the appellant's rights. The Commissioner must be provided with evidence demonstrating that the institution's hiring practices have been publicly called into question, necessitating disclosure of the application and resume in order to subject the activities of that institution to public scrutiny; and/or that the contents of the application/resume have a demonstrated relevance to the fair determination of rights affecting the appellant.

In my view, the extent of disclosure already provided to the appellant, together with the portions of the record released as a result of this order, is sufficient, with respect to this particular job competition, to subject the activities of the institution to public scrutiny. Disclosure of the

personal information of the applicants, in my view, is not necessary to achieve the purposes of section 21(2(a) of the Act.

As far as section 21(2)(d) is concerned, in Order P-312, Assistant Commissioner Mitchinson established a four part test which must be satisfied in order for section 21(2)(d) to be a relevant consideration. He stated, at pages 8 and 9:

> ... in order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:
>
> (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
>
> (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
>
> (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
>
> (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

In my view, the appellant has failed to establish these requirements. The appellant has provided no evidence to indicate that a legal right affecting his interests is at issue, and has also provided no indication that a proceeding which would deal with his rights is either existing or contemplated. Consequently, I find that section 21(2)(d) is not a relevant consideration in the circumstances of this appeal.

Therefore, the presumption of an unjustified invasion of the personal privacy of the applicants in this job competition has not been rebutted.

ORDER:

1. I uphold the institution's decision not to disclose the applications and resumes of all applicants in the job competition.

2. I order the institution to disclose the portions of pages 29 to 43 of the record to the appellant which are **not** in highlighting in the copy of the record which is being sent to the institution with a copy of this order, within fifteen (15) days from the date of this

order and to advise me in writing, within five (5) days from the date of disclosure, of the date on which disclosure was made. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

3. In order to verify compliance with the provisions of this order, I order the head to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2, only upon request.

Original signed by: July 15, 1992
Tom Wright
Commissioner