



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-32

Appeal M-910326

Midland Public Utilities Commission



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ORDER

BACKGROUND:

A request for access to all available records such as bills, notes, letters, etc. as they relate to named individuals was transferred under section 28 of the provincial Freedom of Information and Protection of Privacy Act by Ontario Hydro to the Midland Public Utilities Commission (the institution). The institution informed the named individuals of the request and sought their views regarding the disclosure of the records.

In response, one of the named individuals requested access to the name of the original requester. The institution denied access to the name of the original requester under section 14 of the Municipal Freedom of Information and Protection of Privacy Act (the Act). This decision was appealed, and is the subject of this order.

The record which contains the requested information is a one-page letter, dated July 22, 1991 requesting information concerning the appellant and other individuals.

Mediation efforts were not successful and the matter proceeded to an inquiry. Notice that an inquiry was being conducted to review the decision of the head was sent to the appellant, the institution, and the original requester (the affected person). Enclosed with each notice was a report prepared by the Appeals Officer, intended to assist the parties in making representations to this office concerning the subject matter of the appeal. Representations were received from the appellant and the affected person. The institution did not submit representations, but indicated that it had no objection to the disclosure of the information.

PRELIMINARY MATTERS:

The affected person claims that the record at issue is a clinical record because, "to the best of [his or her] knowledge", a copy of the record, along with other documents relating to this matter, was placed in a clinical record file.

Section 65(2) of the provincial Freedom of Information and Protection of Privacy Act states that the provincial Act does not apply to a clinical record. The municipal Act does not contain a provision which is equivalent to section 65(2) and therefore the appellant's claim has no application. By way of comment only, I believe that to find that an access to information request made to an institution under the Act can in some way become a "clinical record" would be to stretch the meaning of those words beyond reasonable bounds.

The affected person has also raised the application of sections 13 and 14(5) of the Act. Sections 13 and 14(5) are discretionary exemptions and, since the institution did not claim them, I am of the view that these sections are not at issue in this appeal.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested 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 14 of the Act applies.
- C. Whether the mandatory exemption provided by section 10 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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

"Personal information" is defined in section 2(1) of the Act in part, as follows:

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

- (h) the individual's name if 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;

While a name alone cannot be considered personal information, where a name appears in the context of a request for access to information under the Act, disclosure of 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".

ISSUE B: If the answer to issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.

Once it has been determined that a record contains personal information, section 14 of the Act provides a general rule of non-disclosure of the personal information to any person other than the individual to whom

the personal information relates. Section 14(1) provides some exceptions to this general rule of non-disclosure, one of which, section 14(1)(f), 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.

Section 14(3) lists the types of information the disclosure of which would raise a presumption of an unjustified invasion of personal privacy. The affected person relies on sections 14(3)(d) and (f), which read:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (d) relates to employment or educational history;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The affected person's name does not describe any of the types of information listed in section 14(3)(f) and, in my view, a person's name, without more, would not constitute "employment history" within the meaning of section 14(3)(d). The information at issue does not conform to any of the other types of information listed in section 14(3). Therefore, no presumption of an unjustified invasion of the personal privacy of the affected person exists.

Section 14(2) provides some criteria for the head to consider in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. The affected person submits that sections 14(2)(e), (f) and (h) are relevant in the circumstances of this appeal. These sections read:

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,

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

The affected person submits that his or her name was supplied with a reasonable expectation that such information was being supplied in confidence, and therefore section 14(2)(h) applies. The Act does not explicitly or implicitly impose a general rule of non-disclosure of the names of requesters. I have reviewed the affected person's request, and can find no indication of a desire that his or her name be kept confidential. Though it is clear that the affected person does not wish his or her identity to be disclosed at this time, I am not satisfied that section 14(2)(h) is a relevant consideration in the circumstances of this appeal.

In referring to section 14(2)(e), the affected person submits that disclosure of his or her name would expose him or her to pecuniary or other harm. Because the nature of his or her evidence in support of the application of section 14(2)(e) might serve to identify him or her, I am unable to set it out in detail. However, in the absence of further evidence, I am not prepared to accept the affected person's contention that, if identified, he/she would be exposed unfairly to the harm specified. Accordingly, I find that section 14(2)(e) is not a relevant consideration in the circumstances of this appeal.

Beyond claiming that he/she feels that his or her name as requester is sensitive information, the affected person does not provide any evidence to substantiate the relevance of section 14(2)(f). In the circumstances, I am not satisfied that the name of the affected person is highly sensitive.

The affected person has requested access to personal information of the appellant. Since the information requested by the affected person is the personal information of the appellant, it is my view that the appellant has an interest in knowing the identity of the affected person. The appellant has submitted representations in support of his interest.

Having considered all of the circumstances, I find that the disclosure of the name of the original requester would not be an unjustified invasion of his or her personal privacy.

I wish to point out that my conclusion in this appeal should not be taken as an indication that names of requesters should be routinely disclosed. Each request for such information must be evaluated on its own merits with decisions on disclosure made on a case-by-case basis.

ISSUE C: Whether the mandatory exemption provided by section 10 of the Act applies.

The affected person claims that sections 10(1)(a), (b) and (c) of the Act apply to exempt his or her name from disclosure. The affected person submits that the style in which a request for access to information is written, along with the terms, options and/or conditions provided in such a request may constitute a trade secret, technical and/or commercial information.

I note that the appellant is seeking access to the name of the affected person, not a copy of the complete request. Accordingly, I am of the view that disclosure of the name of the affected person would not reveal any trade secret, technical or commercial information, and the name alone does not qualify for exemption under section 10.

ORDER:

1. I order the institution to disclose to the appellant the portion of the record which contains the name of the person requesting information relating to the appellant within 35 days of the date of this order and **not** earlier than the thirtieth day following the date of this order.
2. The institution is further ordered to advise me in writing within five days of the date on which disclosure was made. Such 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 record which was disclosed to the requester, pursuant to Provision 1, only upon request.

Original signed by: _____
Tom Wright
Commissioner

_____ August 25, 1992