



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

ORDER P-307

Appeal 900633

Ministry of Skills Development



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O R D E R

BACKGROUND:

On February 23, 1990, the Ministry of Skills Development (the "institution") received a request under the Freedom of Information and Protection of Privacy Act (the "Act"). The requester was seeking access to a list of the names and addresses of hairstyling apprentices registered with the institution.

On March 16, 1990, the institution indicated that access to the names of the apprentices was available, but that access to their addresses was denied under section 21 of the Act. The institution provided the requester with a fee estimate of \$800.00 and requested a deposit equal to one half of that amount before it would proceed to grant access to the names.

On November 7, 1990, the requester submitted a second request for the same information to the institution. This request was accompanied by several new arguments intended to persuade the institution to disclose the requested information. In its response, the institution stated that its position was the same as set out in its letter of March 16, 1990, and rejected the requester's arguments as to why all of the requested information should be disclosed.

On November 27, 1990, the requester appealed the head's decision to continue to deny access to the addresses. Notice of the appeal was given to the institution and the appellant. An Appeals Officer was assigned to investigate the circumstances of the appeal and attempt to mediate a settlement. The Appeals Officer obtained a portion of the record, which consisted of a computer printout showing the names and home addresses of individuals enrolled in the hairdressers' apprenticeship program. The entire record consists of some 1250 names and addresses. Because the information in the portion of the record obtained by the Appeals Officer is identical in nature to that contained in the balance of the record, it is not necessary for me to review the entire record in order to properly decide the issues in this appeal.

Because mediation was not successful, notice that an inquiry was being conducted to review the head's decision was sent to the institution and to the appellant. An Appeals Officer's Report,

intended to assist the parties in making representations concerning the subject matter of the appeal, accompanied the Notice of Inquiry. Representations were received from both the institution and the appellant.

After receiving the representations, a new issue was identified. Specifically, I questioned whether or not disclosure of the names contained in the record would be contrary to the mandatory exemption in section 21(1) of the Act. Both parties to the appeal were invited to submit supplementary representations on this issue and both declined, indicating that they did not wish to add anything to their previous submissions.

ISSUES:

The issues in the appeal are:

- A. Whether the Information and Privacy Commissioner has the authority to hear this appeal.
- B. Whether the Information and Privacy Commissioner can review the head's decision to disclose the names of the individuals identified in the record.
- C. Whether the names and/or addresses of the individuals identified in the record are personal information as defined in section 2(1) of the Act.
- D. If the answer to Issue C is yes, whether the mandatory exemption provided by section 21 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the Information and Privacy Commissioner has the authority to hear this appeal.

The institution submits that the second request, which it received on November 7, 1990, is not a new request and that the time for filing the appeal should be counted from March 16, 1990, the date of its response to the first request. The time limit for filing appeals is specified in section 50(2) of the Act, which states:

An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

The institution submits that, because this appeal was filed on November 27, 1990, and its initial notice of decision was given on March 16, 1990, the appeal was filed 257 days after the decision was issued. This is significantly in excess of the thirty day period specified in section 50(2) of the Act, and the institution takes the position that the Information and Privacy Commissioner therefore lacks jurisdiction to hear this appeal.

Commissioner Tom Wright considered the issue of delay in the filing of appeals in Order 202. As can be seen by the following excerpt

from pages 8-10 of that Order, the circumstances in that appeal are similar to those in the present appeal:

The institution argues that the appellant's requests of March 21, 1989 and September 8, 1989 were the same request. It states that it complied with sections 24 and 30 of the Act in its decision letter of May 5, 1989 to the appellant and therefore asserts that it had neither the statutory authority to, nor did it, deal with the same request more than once.

I do not accept the institution's position. In my opinion the institution either treated the appellant's letter of September 8, 1989 as the same, continuing request or as a new request.

...

Thus, by its course of conduct, the institution either treated the September 8, 1989, letter as a new request or reviewed its prior decision of May 5, 1989, and made another, albeit the same, decision.

...

Therefore, I conclude that the institution's letter of September 13, 1989 was a decision made by the head in response to a request made under the Act. The appellant filed his notice of appeal on October 4, 1989, which brings it within the statutory 30-day period. I therefore find that I have the authority to review the decision of the head.

In my view, the circumstances in this appeal are analogous to those set out in Order 202. I find that the appellant's request

of November 7, 1990 constitutes a new request and the institution's response of November 15, 1990 is the decision at issue in this appeal, notwithstanding that the decision reiterates a position taken on March 16, 1990. Since the appeal was filed on November 27, 1990, it is within the time for filing appeals specified in section 50(2) of the Act. I therefore find that I have the authority to review the decision of the head.

ISSUE B: Whether the Information and Privacy Commissioner can review the head's decision to disclose the names of the individuals identified in the record.

The question of the correctness of the head's decision to disclose the names of the individuals identified in the record has not been raised by the appellant, who wants access to both the names and the addresses. However, because the personal information exemption found in section 21(1) of the Act is mandatory, unless one of the exceptions listed in that section is applicable, I have a responsibility to consider any aspect of the decision under appeal which could result in records being disclosed in contravention of that mandatory exemption.

The names have not been disclosed, despite the head's decision to do so, because the appellant has not paid the fee deposit requested by the institution. Consequently, in these circumstances, the Act requires me to review all portions of the head's decision, including the decision to disclose the names. Section 54(1) of the Act directs the Commissioner or his delegate "[a]fter all of the evidence for an inquiry has been received" to "make an order disposing of the issues raised by the appeal". The appeal in this case implicitly raises the issue of whether the names of the individuals identified in the record are personal information and, if they are, whether the mandatory exemption from disclosure of personal information applies to prevent disclosure of the names.

The factors which are relevant to determining whether or not the names are personal information, and whether their disclosure would constitute an unjustified invasion of personal privacy, are the same as those which must be considered in determining the proper treatment of the addresses. To avoid repetition, I will deal with both the names and the addresses together in my discussion of Issues C and D.

ISSUE C: Whether the names and/or addresses of the individuals identified in the record are 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

- (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,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (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;

[Emphasis added]

Because disclosure of the names would reveal information about the education of the individuals identified in the record, namely the fact of their enrolment in the apprenticeship program, their names, in the context of this appeal, are clearly within the definition of personal information, as contemplated in paragraphs (b) and (h) of that definition. As far as the addresses are concerned, they fall directly within paragraph (d) of the definition.

ISSUE D: If the answer to Issue C is yes, whether the mandatory exemption provided by section 21 of the Act applies.

Once it has been determined that a record contains personal information, section 21 of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, sections 21(1) (a) and (f) read:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The institution did not seek the consent of the individuals identified in the record to disclose either their names or addresses, as contemplated in section 21(1)(a). Therefore this exception to the exemption is not available in the circumstances of this appeal.

In his representations, the appellant expresses the view that the institution ought to have contacted the individuals to seek their consent. The institution did not intend to disclose the addresses because, in its view, that would constitute an unjustified invasion of personal privacy. In the circumstances of this appeal, I find that the institution's decision not to seek the consent was in accordance with section 28 of the Act.

As far as section 21(1)(f) is concerned, this exception is available "if the disclosure does not constitute an unjustified invasion of personal privacy". Some of the factors to be considered by the head in deciding whether this exception is available in the circumstances of a particular request are listed in section 21(2) of the Act, which states, in part:

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,

- (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;

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

Section 21(2)(b)

The appellant submits that his products relate to personal hygiene, beauty and care of the human body and, as such, would have the effect of promoting health and safety as mentioned in section 21(2)(b). In my view, this section was not intended to promote the cosmetic care of the human body, and I find that section 21(2)(b) is not a relevant consideration in these circumstances.

Section 21(2)(c)

The appellant also submits that section 21(2)(c) is applicable to his request, because the marketing activity he intends to undertake would have the effect of promoting the informed choice of goods and services. In my view, section 21(2)(c) is not intended to create an exception to the mandatory personal information exemption for the purpose of making mailing lists available to the public for marketing purposes. I find that section 21(2)(c) is also not a relevant consideration in this appeal.

Section 21(2)(h)

The information at issue in these appeals is collected by the institution on a form entitled "Contract of Apprenticeship". The following statement appears on that form:

For the purpose of the Freedom of Information and Protection of Individual Privacy Act, the apprentice consents to the disclosure of the apprentice's name and address and information regarding the apprentice's school performance and attendance, and employment history and location to the apprentice's employer, Joint Apprenticeship Committee, Local Apprenticeship Committee, the Government of Canada and other ministries of the Ontario government where necessary for the proper administration of the apprenticeship program and the apprentice agrees that such disclosure

is consistent with the purpose for which the information is collected.

In my view, it would be reasonable for an apprentice to infer from this statement that the information on the form would be kept confidential except in the circumstances outlined on the form. In my view, the names and addresses of the apprentices were otherwise provided to the institution implicitly in confidence, and the provisions of section 21(2)(h) are relevant in the circumstances of this appeal. This factor weighs in favour of non-disclosure of the requested information.

Having considered all the circumstances of this appeal and the representations received from the parties, I find that the disclosure of the names and addresses of the apprentices would constitute an unjustified invasion of their personal privacy. I also find that the disclosure of the names alone, without the accompanying addresses, would constitute an unjustified invasion of personal privacy. Because none of the exceptions to the exemption in section 21(1) have been established with respect to either the names and addresses, or the names alone, in my view, the exemption is properly applicable to both the names and the addresses.

ORDER:

1. I uphold the head's decision not to disclose the addresses contained in the record.
2. I order the head not to disclose the names contained in the record.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ June 4, 1992