



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

ORDER P-405

Appeal 900453

Ministry of Consumer and Commercial Relations



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

ORDER

BACKGROUND:

The Ministry of Consumer and Commercial Relations (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the Ministry's investigation of the requester's business activities. Specifically, the requester wanted access to all correspondence between the Ministry and several named parties; all complaints filed with the Ministry about himself or his companies, including the names of the complainants; and all records of meetings attended by Ministry staff with customers and ex-customers of his companies, law enforcement agencies and lawyers for complainants. The requester clarified to the Ministry that his request for correspondence and complaint related materials was to cover all records dated from June 1987 to the date of his request; his request relating to meetings was to cover records dated from June 1988 to the date of his request.

The Ministry notified certain affected persons of the request, all of whom objected to the disclosure of information relating to them. The Ministry then released some records, and decided to deny access to others, either in whole or in part, claiming sections 14, 17, and 21 of the Act. Subsequent to the decision, the Ministry sent the appellant an index of the records listing 46 separate items, and indicating the specific exemption(s) under which each record was withheld.

In addition, the Ministry informed the requester that it had identified 238 files containing records responsive to the part of the request relating to the complaints filed. The Ministry advised the requester that it had decided to charge a fee in relation to these records, and provided him with a fee estimate.

The requester appealed both the decision to deny access and the fee estimate, and two separate appeal files were opened to deal with these decisions. The records subject to the fee appeal, the complaint files, are dealt with under Appeal P-910650. This order disposes of the issues raised in the Ministry's denial of access.

During mediation, the appellant claimed that more records responsive to his request existed. This matter was resolved following an investigation by this office's Compliance Department.

For ease of reference, the numbering in the Ministry's index will be used in this order to identify the records.

Records 30 and 35 fall outside the time frame of the request, and are outside the scope of this appeal. Records 39 and 40 were disclosed to the appellant in their entirety and Records 1 and 41 were disclosed with severances.

Further mediation of the appeal was not possible, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry, and the affected persons. Written representations were received from the Ministry, the appellant and two of the affected persons.

In its representations, the Ministry has indicated that it has withdrawn all exemptions which it initially claimed for Records 5, 14, 17, 25, 29, 36, 37, 38 and 44. However, it requested that I examine the affected persons' submissions, if any, with regard to the application of sections 17(1)(a) and (c) of the Act to these records. The affected persons representations do not address these records specifically; however, having examined the contents of these records I am of the view that they do not trigger the application of any of the mandatory exemptions under the Act, and therefore, they should be disclosed.

The records which remain at issue in this appeal are:

2, 3, 4, 4A, 6-13, 15, 16, 18-24, 26, 27, 28, 31, 32, 33, 34, 42, 43, 45, 46 and parts of 1 and 41.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in any of the records 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.
- C. Whether the discretionary exemption provided by section 14 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in any of the records 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,

...

- (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;

I have reviewed the records. Records 1, 2, 3, 4A, 6-10, 41, 42, and 43 consist of memoranda, notes and correspondence relating to complaints lodged by individuals about the appellant's business activities. Record 22 is a list of names and addresses of the complainants. Records 45 and 46 are summaries of the complaints received about the appellant's business activities, and include the names of the complainants. In my view, these records contain personal information that qualifies under the above-mentioned paragraphs of the definition of personal information, and relates to individuals other than the appellant.

The Ministry claims that Records 15, 16, 18, 19, 20, 21, 23, 24, 26, 27, 31 and 33 also contain personal information. These records are pieces of correspondence between the Ministry and the affected persons and, in my view, only a part of Record 21 contains information that satisfies the definition of personal information. The rest of the records do not contain personal information.

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

I have found under Issue A that Records 2, 3, 4A, 6-10, 22, 42, 43, 45, 46 and parts of 1, 21 and 41 contain personal information that relates to identifiable individuals other than the appellant. The Ministry claims that section 21(3)(b) of the Act applies to these records. This section states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The Ministry submits that the records were gathered and/or created during its investigation of allegations of unfair business practices by the appellant's companies, under the Business Practices Act (the BPA)

Having reviewed the relevant provisions of the BPA and the records at issue, I am satisfied that the personal information contained in these records was compiled and is identifiable as part of an investigation into a possible violation of the BPA. In my opinion, the requirements for a presumed unjustified invasion of the personal privacy of individuals under section 21(3)(b) have been satisfied.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy have been established, I must then 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 that pertains to section 21(4).

Section 21(2) of the Act also provides a list of factors, a combination of which, if present, could rebut a presumption (Order 20). The appellant's representations do not specifically address any of the factors identified in section 21(2). However, I have carefully reviewed these provisions, and in my view, there are no combination of factors which favour disclosure of the records, in the circumstances of this appeal.

Accordingly, it is my view that disclosure of the personal information contained in Records 1, 2, 3, 4A, 6-10, parts of 21, 22, 41, 42, 43, 45, and 46 would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b), and the records are properly exempt.

Because I have found these records to be exempt, I will not discuss them further in this order.

ISSUE C: Whether the discretionary exemption provided by section 14 of the Act applies.

Records 4, 11, 12, 13, 15, 16, 18-20, 23, 24, 26, 27, 28, 31, 32, 33, 34 and parts of 21 have been withheld under one or more of the provisions of sections 14(1)(a), (b), (d) and (g) and section 14(2)(a) of the Act. Sections 14(1)(a), (b), (d) and (g) states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

Section 14(2)(a) states as follows:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In order for a record to qualify for exemption under these sections, the matter to which the record relates must relate to law enforcement. The term law enforcement is defined in section 2(1) of the Act, as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The Ministry states that the records at issue were gathered and created in the course of investigating allegations of unfair business practices under the BPA. The BPA provides that any individual or corporation is subject to a penalty if found guilty of engaging in an unfair business practice. In my opinion, the investigative process under the BPA satisfies the requirements of the definition of "law enforcement" under section 2(1) of the Act. Investigations that are conducted under the authority of the BPA lead or could lead to proceedings in a court or tribunal where a penalty or sanction could be imposed.

Dealing first with section 14(1)(d), the Ministry claims:

disclosure of these records would reveal the identities of the authors or recipients who are confidential sources of information.

It has been stated in a number of orders that in order to establish confidentiality under section 14(1)(d) of the Act, the institution must provide evidence of the circumstances in which the information was given (Orders 139, P-304).

In its representations, the Ministry has provided a description of the circumstances under which the information was received. It has also given a description of the law enforcement process under the BPA and its practices in conducting such investigations.

The affected persons indicate in their representations that all of the information they supplied to the Ministry was supplied in "strict confidence."

The appellant has submitted documentary evidence, including excerpts of a court transcript in support of his position that the records are not exempt.

Having carefully reviewed the representations of the parties and the contents of the records, I am of the view that, in the circumstances of this appeal, disclosure of the records could reasonably be expected to disclose the identities of confidential sources of information. Therefore, I find that the records identified at the beginning of this issue qualify for exemption under section 14(1)(d) of the Act.

In reviewing the Ministry's representations regarding its exercise of discretion in refusing to disclose the records, I have found nothing to indicate that the exercise of discretion was improper, and will not alter it on appeal.

Because I have found that section 14(1)(d) applies to all of the records under this issue, it is not necessary for me to deal with the applicability of sections 14(1)(a), (b), (g) and 14(2)(a).

ORDER:

1. I uphold the Ministry's decision to deny access to Records 2, 3, 4, 4A, 6-13, 15, 16, 18-24, 26-28, 31-34, 42, 43, 45, 46 and parts of 1 and 41.
2. I order the Ministry to disclose to the appellant Records 5, 14, 17, 25, 29, 36, 37, 38 and 44 within thirty five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to provision 3, **only** upon my request.

Original signed by: _____
Asfaw Seife
Inquiry Officer

January 28, 1992