



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-268**

**Appeal P-910063**

**Ministry of the Solicitor 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/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## O R D E R

### BACKGROUND:

On December 5, 1990, a request was made to the Ministry of the Solicitor General (the "institution") for access to a report (the "record") written by an employee of the institution and submitted in support of that employee's claim for Workers' Compensation Board ("WCB") benefits. The requester wished to obtain a copy of the record because he had been informed that the other employee, who was his subordinate, had made derogatory remarks about him in the record, and that this had been a factor which was used against him in the context of a job promotion competition.

On January 31, 1991, the institution informed the requester that it had received representations from the author of the record, and that access was being denied pursuant to sections 21(1)(f), 21(2)(f) and 21(3)(a) of the Freedom of Information and Protection of Privacy Act (the "Act"). The requester appealed the decision to this office.

The Appeals Officer obtained and reviewed a copy of the record.

Mediation of the appeal was unsuccessful and the matter proceeded to an inquiry. Notices of Inquiry were sent to the institution, the appellant and the author of the record (the "affected person").

Written representations were received from all three parties.

After reviewing the representations, the Appeals Officer determined that sixty-four additional pages had been attached to the record. The parties agreed that this attachment should be considered as part of the record responding to the request, and the institution released the attachment to the appellant, subject to some minor severances. The appellant has advised this office that he is

satisfied with the institution's decision with respect to the attachment.

The appellant also stated that he is not seeking access to any information about the affected person's medical or psychological history. Accordingly, those parts of the record which contain information relating to the medical or psychological history of the affected person have been excluded from the scope of this appeal.

Therefore, the information at issue in this appeal is restricted to the parts of the record which contain information relating to employment-related incidents involving the appellant and the affected person.

**ISSUES:**

- A. Whether the information contained in the requested record qualifies as "personal information", as defined by section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies.

**DISCUSSION:**

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

Section 2(1) of the Act states in part:

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

I have reviewed the contents of the record and, in my view, it contains recorded information about identifiable individuals, namely the affected person and the appellant, and therefore meets the requirements of the introductory wording of the definition of personal information.

Section 47(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 49 provides a number of exemptions to this general right of access. One such exemption is contained in section 49(b) of the Act, which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

I will now consider whether the exemption provided by section 49(b) of the Act applies.

**ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies.**

As has been stated in a number of previous orders, section 49(b) of the Act introduces a balancing principle, which requires the head to look at the information and weigh the requester's right of access to his/her own personal information against another individual's right to the protection of his/her privacy. If the

head determines the release of the information would constitute an unjustified invasion of the other individual's personal privacy, section 49(b) gives him/her discretion to deny the requester access to the personal information. (Order 37)

Sections 21(2) and (3) of the Act provide guidance in determining if disclosure of personal information would constitute an unjustified invasion of another individual's personal privacy. I have considered the provisions of section 21(3), and am of the view that none of them are relevant considerations to the parts of the record which are at issue in

this appeal. I shall now consider the provisions of section 21(2).

In their representations, both the head and the affected person submitted that sections 21(2)(f) and (h) are relevant considerations.

Section 21(2)(f)

Section 21(2)(f) states:

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,

the personal information is highly sensitive;

In its representations, the institution submits that the record contains several personal comments about the affected person's employment situation, and as such is highly sensitive and should not be disclosed. In his submissions, the affected person also asserts that the record contains sensitive information. Having reviewed the contents of the record, I find that it describes a series of employment-related incidents between the appellant and

the affected person, which, in my view, could properly be characterized as highly sensitive personal information of both individuals. Therefore, I find that section 21(2)(f) is a relevant consideration in the context of this appeal.

Section 21(2)(h)

Section 21(2)(h) states:

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,

the personal information has been supplied by the individual to whom the information relates in confidence;

Both the head and the affected person submit that the record was implicitly supplied in confidence by the affected person, solely to support his claim for WCB benefits. The head also points out that the record was not written for the purpose of filing a complaint against the appellant, nor was the affected person asking or expecting the institution to take any form of action against the appellant based on the record. In the circumstances of this appeal, I find that it was reasonable for the affected person to expect that the record would be used by the institution solely for the purpose for which it was submitted, and that it would be held in confidence by the institution. Therefore, I find that section 21(2)(h) is also a relevant consideration.

In his representations, the appellant raises the application of sections 21(2)(d) and (e).

Section 21(2)(d)

Section 21(2)(d) states:

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,

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

The appellant submits that he has a right to know what the record says about him, because he feels there is a connection between the record and the fact that he was denied the opportunity to participate in the job promotion process.

The head acknowledges that the problems between the appellant and the affected party were a factor in the decision to deny the appellant the opportunity to compete for promotion. However, he also states that the appellant's district staff commander had prior knowledge of problems between the affected party and the appellant, and that these problems were discussed with the appellant on three occasions prior to the submission of the record which is at issue in this appeal.

After being denied the opportunity to compete for the promotion, the appellant asked for a further review of the promotional assessment with the district superintendent. This review took



place, and the original decision was upheld. Although further formal appeal rights were available to the appellant, he chose not to exercise them.

A number of previous orders have interpreted the words "relevant to a fair determination of rights" in the context of section 21(2)(d). Although it is clear that the proper interpretation is dependent on the particular circumstances of an individual appeal, a number of factors have been found to be relevant. Some of these are:

- whether or not the appellant's rights have or may be affected. (Orders 121, 135, 139, 171, P-223)
- the immediacy of proceedings at which a determination of rights would be made. (Orders 121, 135)
- the availability to the appellant of other mechanisms for disclosure of the information. (Orders 139, 165)
- the relevance of the record at issue to a fair determination of the appellant's rights. (Order P-224)

In the circumstances of this appeal, I am not convinced that release of the record is relevant to the fair determination of any rights of the appellant. In the context of the promotional process in which the appellant was involved, he chose not to exercise all available appeal rights. The institution has advised this office that the promotional process has been completed and no future proceedings involving the appellant are

contemplated. The appellant has not provided any information which would indicate the likelihood of future proceedings involving a determination of his rights, and, in my view, section 21(2)(d) is not a relevant consideration in the context of this appeal.

Section 21(2)(e)

Section 21(2)(e) states:

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,

the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

The appellant states in his representations that the denial of the right to compete in the promotional process has exposed him unfairly to pecuniary harm.

The appellant has not provided any information which would substantiate his claim of harm as a result of the release of the record. For the same reasons outlined in my discussion of section 21(2)(d), I find that section 21(2)(e) is not a relevant consideration in this appeal.

Having examined the record and considered the representations of all parties, it is my view that the disclosure of the parts of

the record at issue in this appeal to the appellant would constitute an unjustified invasion of the personal privacy of the affected person. As such, the record is subject to exemption under section 49(b) of the Act.

Section 49(b) is a discretionary exemption giving the head the discretion to refuse to disclose personal information to the individual to whom it relates. I find nothing improper with the head's exercise of discretion and would not alter it on appeal.

**ORDER:**

I uphold the decision of the head not to disclose the record.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

February 5, 1992  
\_\_\_\_\_  
Date