



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

ORDER P-426

Appeals P-9200630, P-9200632 and P-9200636

Ministry of Community and Social Services



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ORDER

BACKGROUND:

The Ministry of Community and Social Services (the Ministry) received three separate requests for access under the Freedom of Information and Protection of Privacy Act (the Act) to the files of three job competitions conducted by the Ministry. The requester was a candidate in all of the competitions. The Ministry issued three decision letters, and for each request, the Ministry provided copies of the questions, together with the requester's answers and ratings, but denied access to information pertaining to the other candidates under section 21(1) of the Act. The Ministry also denied access to "answers to questions used in the interview as well as other acceptable answers to the written test" (the correct answers) pursuant to sections 18(1)(f) and (g) of the Act.

The requester appealed the Ministry's refusal to provide the correct answers in all of the three job competitions. Separate appeal files were opened for each decision; however, because all three files involve a request for the same type of information, by the same person and from the same Ministry, this order will dispose of the issues raised in all three appeals.

Mediation was not possible and notice that an inquiry was being conducted to review the decisions of the Ministry was sent to the appellant and the Ministry. Written representations were received only from the Ministry.

The records at issue in these appeals are rating materials containing the correct answers for oral and written questions in relation to the following three job competitions: Special Agreements Officer- #TAO-15/92; Income Maintenance Program Review Officer- #Temp 6/92, and Parental Support Worker- #Temp 5/92.

ISSUES:

- A. Whether the discretionary exemption provided by section 18(1)(f) of the Act applies.
- B. Whether the discretionary exemption provided by section 18(1)(g) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 18(1)(f) of the Act applies.

Section 18(1)(f) of the Act reads as follows:

A head may refuse to disclose a record that contains,

plans relating to the management of personnel or the administration of an institution that have not **yet** been put into operation or made public

[Emphasis added]

In Order P-229, Commissioner Tom Wright established the following test with respect to section 18(1)(f):

In order to qualify for exemption under subsection 18(1)(f) of the Act, the institution must establish that a record satisfies each element of a three part test:

1. the record must contain a plan or plans, and
2. the plan or plans must relate to:
 - i) the management of personnel or
 - ii) the administration of an institution, and
3. the plan or plans must not yet have been put into operation or made public.

I will consider part three of the test first. In responding to this part of the test, the Ministry states in its representations:

The Ministry hiring plan in so far as it is comprised of interview questions and answers is not made public as it again is clear that to do so would result in a biased and unfair interview process. It is in the interests of fairness that interviews are standardized by using the same questions so that the best qualified applicant may be objectively hired for the position. The end result is both benefit to the applicant and to the Ministry. When a candidate is interviewed for a job, responses to interview questions play a large role in his or her success. If a candidate has access to interview questions prior to the interview, while his or her evaluation is based upon those answers, it is difficult to determine whether the candidate is qualified for the position. This is not only unfair to the other candidates, but more importantly, it defeats the purpose of the interview, being to select the most qualified person for the job in an objective manner, based upon the merits of each candidate.

The Ministry also argues:

While it has been suggested that a number of sets of questions be drawn up for these positions, this is difficult to do in practice. Interview questions for income maintenance officers are usually fact situations which would be responded to by application of the Family Benefits Act. The answer to the situation might be arrived at by applying a formula for determining eligibility; even though the names and dollar amounts might change, the application of the formula would be the same, and would be used for a variety of fact situations.

The appellant's requests are for the correct answers relating to the job competitions in which she was a candidate. The records which have been identified by the Ministry as being responsive to the requests contain the correct answers which had already been used to evaluate the responses of the candidates in those job competitions.

The Ministry does not dispute that the correct answers were used in the past. Its position appears to be that the correct answers are likely to be used again in future similar competitions, and that their disclosure could have adverse consequences to the job competition process and candidates in future job competitions.

In my view, section 18(1)(f) is designed to protect "plans" that have not **yet** been put into operation or "plans" that have not **yet** been made public; irrespective of the consequences of their disclosure. The section is concerned with the nature and status of the record, rather than the consequences of its disclosure. Therefore, in my opinion, a "plan" that has already been put into operation cannot qualify for exemption under section 18(1)(f), unless it is shown that it will be made public in the future. As indicated above, the correct answers at issue in this appeal have already been put into operation, and the Ministry has not given me any reason to believe that it intends to make them public.

Therefore, even if I were prepared to accept that the records contain "plans" which relate to the management of personnel or the administration of the Ministry, I am not satisfied that the "plans" have not yet been put into operation, or that they will be made public. Based on my review of the records and the Ministry's representations, it is my view that the parts of the records containing the correct answers do not satisfy part three of the test and therefore fail to qualify for exemption under section 18(1)(f) of the Act.

ISSUE B: Whether the discretionary exemption provided by section 18(1)(g) of the Act applies.

Section 18(1)(g) of the Act reads as follows:

A head may refuse to disclose a record that contains,

information including the **proposed** plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person

[Emphasis added]

In Order 229 discussed above, Commissioner Tom Wright also discussed the interpretation of section 18(1)(g). Commissioner Wright established the following test in relation to section 18(1)(g):

In order to qualify for exemption under subsection 18(1)(g) of the Act, an institution must establish that a record:

1. contains information including proposed plans, policies or projects; **and**
2. that disclosure of the information could reasonably be expected to result in:
 - i) premature disclosure of a pending policy decision, or
 - ii) undue financial benefit or loss to a person.

Each element of this two-part test must be satisfied.

In its representations relating to part one of the test, the Ministry submits that the correct answers are part of the hiring plan or policy of the Ministry; however, it does not specifically advert to the "proposed" component of the wording of the test.

In my view, section 18(1)(g) does not protect "plans", "policies" or "projects" that have already been finalized and put into operation. As discussed above under Issue A, the correct answers have already been put into operation.

The Ministry's representations focus on the possible consequences of the disclosure of the correct answers. Even if I were prepared to accept that the correct answers are part of the Ministry's hiring "plan" or "policy", and that their disclosure could result in one of the harms identified under part two of the test, I cannot find that the exemption under section 18(1)(g) is satisfied since the correct answers are not part of "**proposed** plans or policies". Therefore, I find that part one of the two-part test for exemption under section 18(1)(g) has not been satisfied, and the parts of the records containing the correct answers do not qualify for exemption under this section.

ORDER:

1. I order the Ministry to disclose to the appellant the records containing the correct answers for the three job competitions at issue, within fifteen (15) days of the date of this order.
2. In order to verify compliance with the order, I order the Ministry to provide me with a copy of the records which were disclosed to the appellant pursuant to provision 1, **only** upon request.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ March 2, 1993