



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

# ORDER P-470

Appeal P-9200686

Ministry of Housing



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# ORDER

On May 10, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and to make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

## BACKGROUND:

The Ministry of Housing (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a report dated May 13, 1991 prepared by a named individual in response to a 1991 Management Review of the Rent Review Hearings Board (the Board). The Ministry provided partial access to the record. Access was denied to portions of pages 17, 18, 19 and 20 pursuant to sections 21(1), 21(2)(g) and (i), and 21(3)(d) and (g) of the Act. The requester appealed the Ministry's decision to deny access to the information on pages 19 and 20 of the record. Section 21(3)(d) was not claimed by the Ministry to apply to either of these pages.

Attempts to further mediate the appeal were unsuccessful and notice that an inquiry was being conducted to review the decision of the Ministry was forwarded to the appellant and the Ministry. Written representations were received from both parties.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the 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 21 of the Act applies.

## SUBMISSIONS/CONCLUSIONS:

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

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

"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,  
...
- (e) the personal opinions or views of the individual except where they relate to another individual,  
...
- (g) the views or opinions of another individual about the individual,  
...

Initially, it must be determined whether the information contained in the record is about identifiable individuals.

The information at issue consists of extracts from the Management Review of the Board and the response of the named individual to those portions of the review. These extracts, identified as Cases C, D and E, describe questionable management practices which the Management Review identified as having taken place in specific Ministry job competitions. References are made to certain panellists by position title only. Both the extracts and the responses refer to some of the candidates involved in these competitions, though not by name. There is no indication of the competition number, the date on which the competition took place or the position that was being filled.

In its representations the Ministry submits that:

...it is unable to identify with certainty the names and addresses of the persons whose personal information is contained in the record at issue...

...what is severed are descriptors which we believe, the appellant, being employed at that time in the area of the subject competitions, could use to identify individuals.

In his letter of appeal, the appellant provided some very detailed information concerning his involvement with Case D. In addition, he has described what he believes to be the circumstances surrounding Cases C and E.

In Order P-230, Commissioner Tom Wright stated:

If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

I agree with this approach and adopt it for the purposes of this appeal.

In my view, based on the information provided by the appellant about his knowledge of the matters described in the record, there is a reasonable expectation that the release of the information would disclose information about **identifiable** individuals.

The next matter to be determined is whether the information constitutes the "personal information" of these individuals.

It has been established in a number of previous orders, decided under both the provincial Act and the Municipal Freedom of Information and Protection of Privacy Act, that information provided by an individual in a professional capacity or in the execution of employment responsibilities is not "personal information" (Orders 113, 139, 157, P-257 and P-326). Similar considerations apply in this appeal.

In my view, part of the information withheld from the "Observation" section of Case D and most of that withheld from the "Response" section of the same Case consists of information provided by staff members in their employment capacity. The remainder of the information at issue constitutes the personal information of the candidates. Finally, the record does not contain any personal information of the appellant.

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

Under Issue A, I found that some of the information withheld from the record is the personal information of the candidates involved in the job competitions described in Cases C, D and E.

Section 21(1) of the Act is a mandatory exemption which prohibits disclosure of personal information except in certain circumstances which are listed in sections 21(a) through (f) of the Act.

Before access can be granted to another individual's personal information, it must be established that one of the six listed exceptions found in section 21(1) would apply in the circumstances. For example, a requester or an institution might supply evidence that the individual to whom the information relates has provided written consent to the disclosure of the information (section 21(1)(a)).

In this case, written consent has been provided by the named individual (the author of the report), as well as another individual who was a Board member during the time period in question. However, as I have found that any information provided by employees in the execution of their

employment responsibilities is not "personal information", these consents do not affect the disclosure of any information concerning these individuals.

Access can also be granted to another individual's personal information if the appellant or an institution establishes that disclosure of the information would not constitute an unjustified invasion of the individual's personal privacy (section 21(1)(f)).

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The Ministry specifically relies on section 21(3)(g) to exempt portions of the record containing the personal information of the candidates. This section reads as follows:

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

consists of personal recommendations or evaluations, character references or personnel evaluations;

The terms "personal evaluations" or "personnel evaluations" refer to assessments made according to measurable standards (Order P-447).

In my view, the information at issue is not sufficiently detailed to attract the application of the presumption. It consists of very generalized comments made by the panellists about the candidates and their performance during the competitions.

The Ministry also raises sections 21(2)(g) and (i) in support of its position that the records are exempt. The appellant states that he should have the opportunity to directly respond to any concerns involving his management practices. While the appellant has not explicitly claimed that section 21(2)(d) weighs in favour of disclosure of the records, it is my view that the appellant is implicitly making this argument.

These sections read as follows:

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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (g) the personal information is unlikely to be accurate or reliable;

- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

In order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;
- (2) the right is related to a proceeding which is either existing or contemplated, not one which had already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[Order P-312]

In my opinion, the appellant has not satisfied the above criteria to establish the relevance of section 21(2)(d). I have no indication that the appellant has commenced a legal proceeding, nor that one is contemplated. His arguments in favour of disclosure centre more on a moral or ethical right to access to the record, rather than a legal one.

As I have found that there are no factors which weigh in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, the exception in 21(1)(f) does not apply. Accordingly, the personal information of the candidates is exempt from disclosure under section 21(1) of the Act. I have highlighted this information on the copy of the record provided to the Ministry with this order.

## **ORDER:**

1. I order the Ministry to disclose to the appellant the portions of the record which are **not** highlighted within 15 days of the date of this order.
2. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, **only** upon my request.

Original signed by:  
Anita Fineberg  
Inquiry Officer

June 4, 1993