



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

## **ORDER P-562**

**Appeals P-9200338, P-9200566 and P-9200567**

**Ministry of Housing**



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# ORDER

## 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 all information relating to members and employees of the Metro Toronto Housing Authority (the MTHA). The Ministry subsequently clarified the scope of the request with the requester and granted him partial access to the records. Portions of the records were withheld from disclosure pursuant to section 21 of the Act. In the interim, the requester had written to the Ministry "clarifying" his request to include information relating to the members of the "Revision Committee" of the MTHA.

The requester appealed the decision of the Ministry. The requester maintained that the list of employees of the MTHA was not complete, that the Ministry did not respond to that portion of his request for information on the members of the "Revision Committee", and that the Ministry failed to provide him with a list, in French, of the titles of all the positions within the MTHA. He also indicated that he wished to obtain access to the records in their entirety. The Commissioner's office opened Appeal Number P-9200338 to deal with this matter.

The appellant subsequently submitted another request to the Ministry for the same information as was the subject of Appeal Number P-9200338. In addition, he specifically requested access to all available information on the members and employees of the "Revision Committee" of the MTHA. The Ministry provided the appellant with partial access to information concerning the members of the MTHA Board, and denied access to portions of the remaining records claiming the exemption in section 21 of the Act. The Ministry indicated that it had already provided him with partial access to those records which had been included in his previous request.

The appellant appealed, claiming that he was entitled to access in full to the requested records. He again maintained that the Ministry failed to address that part of his request dealing with information on the members of the "Revision Committee". Appeal Number P-9200566 was assigned to this file.

The appellant submitted a third request to the Ministry in which he requested access to all available records related to the appointment of the MTHA Board members. The Ministry granted partial access to the records, denying access to the resumes of the members pursuant to section 21(3) of the Act.

The appellant appealed this decision on the basis that he wanted access to the records in their entirety. The Commissioner's office opened Appeal Number P-9200567 to deal with this file.

The Ministry subsequently provided the appellant with an explanation of the matters raised in his letters of appeal. It indicated that the list of staff and members of the MTHA it had provided to him was the most current one available. It also indicated that no records existed regarding position titles in French. With respect to both of these issues, the Ministry stated that it was not obliged to create a record.

In this letter, the Ministry also explained to the appellant the composition of the "Revision Committee", which it interpreted to mean the Internal Review Committee of the MTHA and why no list of individual members' names exist.

Mediation was not successful in any of the appeals. Because all three appeals involved the same or similar issues, one notice that an inquiry was being conducted to review the three decisions of the Ministry was sent to the appellant and the Ministry. Representations were received from the Ministry only. This order will deal with all three appeals.

### **PRELIMINARY ISSUE:**

In his letters of appeal with respect to Appeal Numbers P-9200338 and P-9200566, the appellant indicated that the Ministry did not provide him with a complete list of MTHA employees, nor did it provide him with a list in French of the titles of all positions within the MTHA.

The Ministry's position is that in neither of these instances was it obliged to create a record to respond to the request.

In Order 99, former Commissioner Sidney B. Linden made the following statement on this issue:

While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the Act is to **information contained in a record existing at the time of his request**, in my view the creation of a record in some circumstances is not only consistent with the spirit of the Act, it also enhances one of the major purposes of the Act, i.e. to provide a right of access to information under the control of institutions. [emphasis added]

I agree with the former Commissioner's comment and, in that light, I have reviewed the Ministry's responses to the requests. As far as the list of MTHA employees is concerned, I am satisfied that the Ministry fulfilled its statutory obligations by providing the appellant with the list that existed at the time of the appellant's request.

The French Language Services Act requires that government agencies, defined in that legislation to include the Ministry, ensure that "services are provided in French". "Service" is defined as:

... any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.

It is my view that, pursuant to the French Language Services Act, the Ministry is obliged to respond, in French, to requests made in French under the Act. This is what the Ministry did in this case. However, it is not obliged to provide a translation of any responsive records. This would result in an institution having to create a record in circumstances in which it is not required to do so. Accordingly, I am of the opinion that there is no statutory obligation on the Ministry to respond to this part of the requests in any way different from the way it did.

## ISSUES:

- A: Whether the information in 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.

### **ISSUE A: Whether the information in the records 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,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

...

The information at issue, as clarified by the appellant during mediation, is the home address and telephone number, date of birth, prior work experience and Social Insurance Number (the S.I.N.) of employees and members of the MTHA. This is the information which was not disclosed to the appellant in Appeal Numbers P-9200338 and P-9200566.

In addition, in Appeal Number P-9200567, the records at issue are the resumes of the MTHA Board members.

In my view, all of the information at issue in the three appeals clearly falls within the definition of "personal information" pursuant to section 2(1) of the Act, and relates to individuals other than the appellant.

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

Section 21(1) of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in certain circumstances listed under the section.

In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of these appeals is section 21(1)(f), which reads as follows:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

In the circumstances of these appeals, the only representations I have been provided with weigh in favour of finding that section 21(1)(f) does not apply. Having found that the information and records at issue qualify as personal information, and in the absence of any evidence or argument weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 21(1)(f) does not apply.

**ORDER:**

I uphold the decisions of the Ministry.

Original signed by: \_\_\_\_\_

Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ October 22, 1993