



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

ORDER P-611

Appeal P-9200821

Ontario Film Development Corporation



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

ORDER

BACKGROUND:

The Ontario Film Development Corporation (the Corporation) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the names of two individuals whom the Corporation had engaged to review a screenplay and to prepare separate reports on the artistic merits of the work. The requester was the author of the screenplay in question. It is the Corporation's policy to provide the authors of screenplays with copies of any reviews which have been completed on their work but to withhold the actual names of the reviewers.

Consistent with this approach, and based on the exemptions contained in section 21 of the Act, the Corporation made the decision to withhold the names of the two reviewers. The requester appealed the Corporation's decision.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the Corporation's decision was sent to the appellant, the Corporation and the two individuals who reviewed the screenplay (the affected persons). Representations were received from all parties.

The records at issue in this appeal consist of the names of the two reviewers. One such name has been removed from a report which the Corporation previously provided to the author. The second is contained in a log which records the dates on which screenplays were sent out for review.

ISSUES:

The issues to be addressed in this appeal are:

- A. Whether the names of the reviewers qualify as "personal information" for the purposes of 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 to the names such that they must be withheld from disclosure.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the names of the reviewers qualify as "personal information" for the purposes of section 2(1) of the Act.

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

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

...

(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, and

(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;

In her representations, the appellant asserts that the Corporation has disclosed her name as the author of the screenplay to the reviewers. The appellant goes on to argue that, because the Corporation has released her name in this fashion, she has a reciprocal right to know the names of the reviewers. In these circumstances, she contends that the names of the reviewers should no longer retain their personal status.

The Corporation submits, on the other hand, that as a matter of policy, it does not provide the names of authors to outside readers.

Even if I found as a matter of fact that the appellant's identity had been shared with the reviewers, I cannot accept the further argument which she has advanced. In my view, the fact that individual (X) possesses information about individual (Y) on whatever basis does not imply that individual (Y) is entitled to the same information about individual (X). The question of whether certain parts of a record constitute personal information must, instead, be determined based on the definition of the term contained in the Act.

In Order P-235, Commissioner Tom Wright dealt with a fact situation which was similar to the one raised in this case. In that order, the records at issue involved the names and addresses of two individuals who had reviewed submissions for the listing of drug products on the Drug Benefit Formulary maintained by the Ministry of Health. The requester was a representative of a drug company that had made such a submission. As in the present case, the requester received full disclosure of the contents of the reports of both drug reviewers but not their names or addresses.

In that order, the Commissioner found that the disclosure of the names of the individual drug reviewers would disclose other personal information relating to the individuals in that it would reveal that a particular person reviewed a particular drug product. On this basis, the Commissioner concluded that the information at issue constituted personal information as defined by the Act and that this personal information was that of the drug reviewers.

In my view, the facts upon which Order P-235 were based are sufficiently similar to the circumstances set out in this case that I am prepared to follow the logic contained in that order. On this basis, I conclude that the names of the two reviewers constitute the personal information of these individuals under section 2(1)(h) of the Act.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to the names such that they must be withheld from disclosure.

Once it has been determined that a record contains personal information, section 21 of the Act provides a general rule of non-disclosure for such information to any person other than the individual to whom the personal information relates. Section 21(1) provides some exceptions to this general rule of non-disclosure, one of which is section 21(1)(f) of the Act. This provision 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.

In order for section 21(1)(f) to apply, I must find that the release of the personal information at issue would **not** constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy.

In their representations, the Corporation and one of the reviewers rely on the presumptions contained in sections 21(3)(d) and (g) of the Act to support the proposition that the release of the names of the reviewers would constitute an unjustified invasion of their personal privacy. These provisions state that:

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

...

(d) relates to employment or educational history;

...

(g) consists of personal recommendations or evaluations, character references or personnel evaluations;

I will first consider the presumption contained in section 21(3)(d) of the Act. The Corporation submits that the disclosure of the names of the reviewers would provide the appellant with information on the employment history of these individuals with the Corporation. I do not accept this argument. In my view, the fact that a particular reviewer evaluated a particular screenplay at a particular point in time is insufficient to characterize this information as the "employment history" of the individual for the purposes of the Act.

The Corporation also claims that the presumption found in section 21(3)(g) is applicable to the facts of the case. The Corporation expresses its position as follows:

[P]roviding the names of outside readers would serve to link the personal opinions and views of the individuals with the identities of the individual ... This would be especially inappropriate given that the [Corporation] requires that the outside reader be frank and open about his or her opinion and assessment of the script.

In order for the section 21(3)(g) presumption to apply in the present context, the personal information must consist of "personal recommendations or evaluations". Based on the facts of this case, I believe that the object of each reviewer's evaluative efforts was the author's screenplay (that is her work product) rather than her personal attributes. For this reason, I find that the presumption found in section 21(3)(g) is not germane to the facts of this case.

The result is that none of the presumptions set out in the Act apply to the personal information at issue in this appeal. Based on the approach adopted in previous orders issued by the Commissioner's office, I must now consider the application of section 21(2) of the Act to this personal information. This provision reads, in part, 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;
- ...
- (f) the personal information is highly sensitive;
- ...
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

In interpreting section 21(2), all the relevant circumstances of the case must be considered not only the factors enumerated in the section.

In its representations, the Corporation submits that section 21(2)(h) of the Act is a relevant factor in determining whether the names of the reviewers should be disclosed. The Corporation states that there was a clear understanding on the part of the reviewers that the names of any readers retained to evaluate screenplays would be kept confidential. In this respect, the Corporation has provided the Commissioner's office with a copy of the standard covering letter which is attached to a screenplay when it is sent out for review. This correspondence states explicitly that the identity of the reviewer will be kept confidential. Both reviewers have also confirmed that they understood that their identities would be held in confidence. In my view, this expectation of confidentiality is a relevant circumstance which would weigh in favour of protecting the privacy interests of the reviewers.

The Corporation and the reviewers also contend that the factors outlined in sections 21(2)(f) and (i) of the Act also favour the non-disclosure of the personal information. Because of the manner in which this appeal will be determined, there is no need for me to consider these representations in greater detail.

In her representations, the author submits that section 21(2)(d) of the Act (the personal information is relevant to a fair determination of the rights affecting the person who made the request) is a consideration which weighs in favour of releasing the names of the reviewers. The appellant also states that the disclosure of this information is necessary to investigate the possible criminal actions of certain individuals. I will treat this consideration as an unenumerated factor under section 21(2) of the Act.

In order for section 21(2)(d) of the Act to apply to the facts of the case, 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; **and**
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**
- (3) the personal information to which the appellant is seeking access 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.

I adopt this test for the purposes of this order.

The appellant states that it is necessary for her to obtain the names of the reviewers to demonstrate how persons who allegedly plagiarised her screenplay might have obtained access to her work. Based on my review of her representations, however, the appellant has not provided sufficient evidence to establish why the identities of these individuals are required in order to prepare for a legal proceeding.

Where an individual believes that another party has misappropriated her work product, the most direct legal action would be to file a statement of claim against that party. I am not convinced that obtaining the names of the reviewers is necessary to initiate this process. On this basis, I find that the test for the application of section 21(2)(d) has not been satisfied. Consequently, the interest expressed in this provision is not a relevant consideration in the circumstances of this case.

I will now deal with the appellant's argument that the names of the reviewers are required to investigate the alleged criminal actions of certain individuals. To support this proposition, the appellant makes the following submission:

Intellectual Property Copyright Infringement is considered to be a criminal offence and ... where confidential information may have been conveyed for profit, disclosure of the readers' name could not be considered unjustified ... The ... refusal to disclose the names ... could be seen to be, if those persons are found to be connected to this copyright infringement, assisting in a criminal offence.

As I interpret this submission, it is the appellant's position that the existence of potential criminal activity should override any privacy interests which may enure to the personal information of the

reviewers. In addition, the appellant believes that accessing the names of the reviewers would assist the relevant authorities to pursue a criminal investigation.

I have carefully considered these representations. In my view, the appellant has failed to provide the necessary evidence to establish that the disclosure of the names of the reviewers is required to initiate a criminal investigation into her allegations. The representations do not indicate, for example, whether the police have actually been approached to pursue the appellant's concerns or whether the information is considered necessary to undertake the investigation. On this basis, I find that the criminal actions consideration is not a relevant factor in determining whether the personal information should be released.

To summarize, I have found that there exists one consideration raised under section 21(2) of the Act (the expectation of confidentiality) which weighs in favour of protecting the privacy interests of the reviewers, and none which predispose towards releasing the names of these individuals. On this basis, I find that the disclosure of the personal information in question would constitute an unjustified invasion of the personal privacy of the reviewers.

ORDER:

I uphold the Corporation's decision.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

January 17, 1994