



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

ORDER P-715

Appeal P-9300629

Ministry of Community and Social Services



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BACKGROUND:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant requested access to a letter from a named child and family services organization to the Ministry of Community and Social Services (the Ministry) which summarized the status of the appellant's lawsuit against the organization.

The Ministry denied access to the letter claiming the application of the exemptions provided by sections 17(1)(d) and 49(b) of the Act. The appellant, through his representative, appealed this decision to the Commissioner's office.

Mediation was not successful, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry, the appellant and to the child and family services organization (the affected person). Representations were received from the appellant and the affected person. The Ministry chose to rely on the representations provided by the affected person.

The record in this appeal consists of a two-page letter, dated March 24, 1993, from the Director of Human Resources of the child and family services organization to the Program Supervisor at the Ministry.

ISSUES:

- A. Whether any of 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, and the personal information relates to the appellant, whether the personal information contained in the record qualifies under the discretionary exemption provided by section 49(b) of the Act.
- C. Whether the mandatory exemptions provided by sections 17(1)(a) and (d) of the Act apply to the record.

SUBMISSIONS/CONCLUSIONS:

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

Personal information is defined in section 2(1) of the Act which states, in part, that:

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

the views or opinions of another individual about the individual;

In his representations, the appellant states that:

Although the letter may make reference to people by name, it deals with these people in their professional capacity, not in their personal capacity and as such, does not qualify as personal information.

I have carefully reviewed the record and, in my view, it contains only the personal information of the appellant. I agree with the submission of the appellant that, although the author of the letter and a number of other individuals are named therein, their views and opinions about the job performance of the appellant are offered in their professional capacities and, therefore, do not constitute their personal information (Orders P-369, P-377, P-427 and P-624).

ISSUE B: If the answer to Issue A is yes, and the personal information relates to the appellant, whether the personal information contained in the record qualifies under the discretionary exemption provided by section 49(b) of the Act.

Under Issue A, I found that the record contains the personal information of the appellant only.

Section 47(1) of the Act gives individuals a general right of access to 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 exceptions to this general right of access. One such exception is found in section 49(b) of the Act, which reads:

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;

Section 49(b) introduces a balancing principle. The Ministry must look at the information and weigh the requester's right of access to her own personal information against the rights of other individuals to the protection of their personal privacy. If the Ministry determines that the release of the information would constitute an unjustified invasion of the other individuals' personal privacy, then section 49(b) gives the Ministry the discretion to deny the requester access to the personal information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of an individual's personal privacy. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Ministry and the affected person have not made reference to any of the presumptions contained in section 21(3) of the Act and I find that none of them are applicable to the record at issue in this appeal. Nor has the Ministry or the affected person made any representations as to the applicability of the considerations listed in section 21(2) of the Act which might favour the non-disclosure of the personal information contained in the record. As I have not been provided with any representations regarding the applicability of any considerations favouring privacy protection, I find that the disclosure of the record will not result in an unjustified invasion of another individual's personal privacy and, therefore, section 49(b) of the Act does not apply to exempt the record at issue from disclosure.

ISSUE C: Whether the mandatory exemptions provided by sections 17(1)(a) and (d) of the Act apply to the record.

Section 17(1)(d)

The Ministry has claimed the application of section 17(1)(d) of the Act to exempt the record from disclosure.

For a record to qualify for exemption under section 17(1)(d), the institution and/or the affected party must satisfy each part of the following test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied in confidence, either implicitly or explicitly; **and**
3. disclosure of the record could reasonably be expected to:
 - (a) reveal information of the type set out in (1) which was supplied to a conciliation officer, a mediator, a labour relations officer, or another person appointed to resolve a labour relations dispute;

OR

- (b) reveal the report of a conciliation officer, a mediator, a labour relations officer, or another person appointed to resolve a labour relations dispute.

[Order P-653]

All three parts of this test must be satisfied in order for the section 17 exemption to apply.

Part One of the Test

The term "labour relations" is not defined in the Act. In Order P-653, Inquiry Officer Holly Big Canoe defined "labour relations information" as referring to information concerning the **collective** relationship between an employer and its employees. I adopt this definition for the purposes of this appeal.

Further, Webster's Third New International Dictionary defines "labour relations" to mean,

Relations between management and labour, especially as involved in collective bargaining and maintenance of contract.

The information at issue does not relate to the collective bargaining process nor to the maintenance of contracts with employees as a whole, but rather, to the individual appellant's

work performance and dismissal from employment. Therefore, I find that the first part of the section 17(1)(d) test has not been met.

As all three parts of the test must be satisfied, I find that section 17(1)(d) of the Act has no application in the circumstances of this appeal.

Section 17(1)(a)

The representations of the affected person also raise the application of section 17(1)(a) of the Act to the record. Since section 17(1)(a) is a mandatory exemption, I believe it appropriate for me to comment on the application of this section as well. For a record to qualify for exemption under section 17(1)(a), the institution and/or the affected person must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 17(1) will occur.

[Order 36]

Part One of the Test

I have found above that the information contained in the record is not labour relations information within the meaning of section 17(1) of the Act. I further find that it is not a trade secret; nor does it qualify as scientific, technical or commercial information. The record does, however, contain three references to proposed severance payments which may be characterized as financial information. I find, therefore, that those portions of the record which refer to severance payments may be characterized as financial information as contemplated by section 17(1)(a) of the Act and that the first part of the section 17(1) test has been satisfied insofar as this information is concerned.

Part Three of the Test

The affected person submits that the disclosure of the record could reasonably be expected to interfere significantly with negotiations between it and other individuals with whom it is involved in litigation settlement discussions. No specific evidence has been adduced, however, as to how such the disclosure of the financial information could reasonably be expected to interfere with these discussions.

In my view, the affected person has failed to establish that the disclosure of the financial information contained in the record would give rise to a reasonable expectation of significant interference with future negotiations between itself and other individuals and that the third part of the test has not been satisfied.

I find, therefore, that the exemption provided by section 17(1)(a) of the Act does not apply to the record at issue in this appeal and that, as no other exemptions have been claimed, it ought to be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose the record to the appellant within thirty-five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ June 28, 1994