



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

ORDER P-735

Appeal P_9300605

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant, a broadcast journalist, has made a request to the Ministry of the Solicitor General and Correctional Services (the Ministry) for access to all records concerning investigations and complaints relating to two named Ministry employees. It should be noted that these investigations did not arise as a result of complaints under the Ministry's Workplace Harassment and Discrimination Policy. The Ministry denied access to the responsive records, relying upon the following exemption:

- invasion of privacy - section 21(1)

A Notice of Inquiry was provided to the Ministry, the appellant and 16 other individuals whose interests might be affected by the disclosure of the records. Representations were received from three of these individuals and the Ministry only.

The records at issue in this appeal are:

Record 1: Preliminary and final investigation reports dated May 17 and June 3, 1993, respectively, relating to a workplace complaint against a named Ministry employee (Employee 1).

Record 2: An investigation report, with a covering memorandum and attachments, relating to allegations made about a named Ministry employee (Employee 2). This record was the subject of Order P_634 of the Commissioner's office in which Assistant Commissioner Irwin Glasberg ordered that it be disclosed with the names and personal identifiers of affected persons removed.

Records 3
and 3A: Two complaint letters, apparently sent in July 1993, regarding the manner in which Employee 2 addressed certain workplace incidents.

The appellant indicated that she is not seeking access to the names and personal identifiers of individuals other than Employees 1 and 2. Accordingly, this information is not at issue in this appeal.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the information at issue and I find that the responsive portions of the records contain the personal information of either Employee 1 or Employee 2.

Section 21(1) of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, unless one of the specified exceptions applies. In

my view, the only exception which might apply in this appeal is section 21(1)(f), which states that the personal information of another individual can be disclosed if it would not be an invasion of that person's privacy to do so.

Section 21(2) of the Act contains a number of factors to be considered, along with all of the other relevant circumstances in the appeal, in determining whether the disclosure of the personal information would be an invasion of privacy.

One of the affected persons provided representations objecting to the disclosure of Record 2. The representations state that the release of the record would result in an invasion of privacy, but no reference is made to any of the factors listed in section 21(2) of the Act. Rather, this individual refers to the alleged motives of the complainant and that the disclosure of the record would result in his or her "victimization". The representations also suggest that no good purpose would be served by the disclosure of any of the records sought by the appellant.

Another affected person submits that the consideration described in section 21(2)(a) (public scrutiny of the institution) applies to Record 2. This document was previously dealt with by Assistant Commissioner Irwin Glasberg in Order P-634. In the present appeal, however, some additional pages of the record remain at issue which were not considered in Order P-634. The second affected person maintains that Record 2 should be disclosed in the same manner as in Order P-634, that is, with the names and other personal identifiers of the affected persons deleted.

The third affected person provided representations concerning Record 3A, in which he has raised the following factors in section 21(2):

- the information is highly sensitive - section 21(2)(f)
- the information is unlikely to be accurate or reliable - section 21(2)(g)

The Ministry refers in its representations on Records 1, 3 and 3A to the applicability of the following considerations listed in section 21(2):

- unfair exposure to harm - section 21(2)(e)
- highly sensitive information - section 21(2)(f)
- supplied in confidence - section 21(2)(h)
- unfair damage to reputation - section 21(2)(i).

The Ministry declined to make representations on the application of any of the section 21(2) considerations to Record 2.

The appellant has not provided any representations raising any of the considerations which weigh in favour of the disclosure of the records.

Having reviewed the evidence before me, I have made the following findings:

- (1) I find that section 21(2)(f) (highly sensitive information) is a relevant consideration with respect to Record 1. Even with the removal of the personal information of persons other than Employee 1, the remaining information would still be highly sensitive.

In the absence of any factors weighing in favour of disclosure, I find that disclosure of Record 1 would constitute an unjustified invasion of personal privacy and that it must not be disclosed.

- (2) Regarding Record 2, I agree with Assistant Commissioner Irwin Glasberg's finding in Order P-634 that it is reasonable to expect that investigation reports which respond to allegations of financial improprieties by government employees will inherently be subject to a high degree of public scrutiny.

I find, therefore, that section 21(2)(a) (public scrutiny of an institution) applies to this record. In the circumstances of this appeal, I find that Record 2 should be disclosed to the appellant in the same fashion as in Order P-634, that is, with the names and personal identifiers of the affected persons removed from the record.

A highlighted copy of Record 2 will be provided to the Freedom of Information and Privacy Co-ordinator for the Ministry with a copy of this order indicating the appropriate information to be withheld.

- (3) The appellant has not referred to any of the considerations listed in section 21(2) or any unlisted factors which favour the disclosure of Records 3 and 3A.

In the absence of any representations favouring disclosure, I find that Records 3 and 3A must not be disclosed as to do so would constitute an unjustified invasion of personal privacy.

ORDER:

1. I uphold the Ministry's decision to deny access to Records 1, 3 and 3A.
2. I order the Ministry to disclose Record 2 except those portions which are highlighted on the copy of the record which is being sent to the Ministry's Freedom of Information and Privacy Co-ordinator, with a copy of this order, to the appellant within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of Record 2, which is disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Donald Hale

July 29, 1994

Inquiry Officer