



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

## **ORDER P-762**

Appeals P-9400092 and P-9400094

Ministry of the Solicitor General and Correctional Services



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## **NATURE OF THE APPEALS:**

These are appeals under the Freedom of Information and Protection of Privacy Act (the Act). The requester asked the Ministry of the Solicitor General and Correctional Services (the Ministry) for all information in his personnel file as well as all information pertaining to his 1990 dismissal from employment with the Ministry.

Access was granted to the requester's employee files from the Toronto Jail and the Ministry's Human Resources Management Branch. The Ministry decided, however, to withhold access to portions of nine records based on the following exemption contained in the Act:

[IPC Order P-762/September 21, 1994]

- invasion of privacy - section 49(b)

The requester appealed the denial of access to the remaining information and contended that additional records should exist, particularly documentation relating to his dismissal. A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from the Ministry only.

The records consist of:

Record 89: A memorandum from the appellant. (The names, Social Insurance Numbers [S.I.N.] and seniority dates of individuals other than the appellant have been withheld.)

Records 52, 55, 56 and 68: "Multiple Address Change" forms. (The undisclosed portions consist of S.I.N.s, names and addresses of individuals other than the appellant.)

Record 34: Standard letter enclosing a Workers' Compensation Board (WCB) form. (The name of an individual other than the appellant has been withheld.)

Records 27, 43 and 46: Documents entitled "Authority to Appoint to Probationary Staff". (The undisclosed portions contain the name of an individual other than the appellant.)

During the Inquiry stage of these appeals, some additional records were identified and disclosed to the appellant. However, the appellant maintains that further records should exist.

## **PRELIMINARY MATTER:**

In its representations, the Ministry submits that the information withheld from disclosure in Records 34, 52, 55, 56 and 68 is not responsive to the appellant's request. The Ministry states that the documents were used to record personal information about employees other than the appellant, and that the appellant has only asked to receive his own personal information.

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In my view, the original wording of the request suggests a broader interpretation than that given by the Ministry. The appellant requested "any and all information gathered" regarding his dismissal as well as "all information collected" in his personnel file. The full text of Records 34, 52, 55, 56 and 68 were located in the Ministry's file(s) which relate specifically to the appellant. On this basis, I find that the information in question falls within the scope of the request.

## **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, including an individual's address; any identifying number assigned to the individual; information relating to employment history; and 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.

I have carefully reviewed all of the records at issue in these appeals to determine if they contain "personal information" and, if so, to whom the personal information relates.

I find that Records 27, 43, 46, and 89 contain the personal information of the appellant **and** other individuals. I also find that the undisclosed portions of Records 34, 52, 55, 56 and 68 (which contain change of address information and notification from the WCB) relate to individuals other than the appellant.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information. It should be noted that the Ministry has provided the appellant with his personal information contained in Records 34, 52, 55 and 56. However, the records in their original, unsevered form contain the personal information of both the appellant and other individuals and will be dealt with, therefore, under the exemption contained in section 49(b) of the Act.

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. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4).

If none of the presumptions contained in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

The Ministry submits that the presumption contained in section 21(3)(d) (employment history) applies to the personal information contained in Records 27, 43, 46 and 89. The Ministry also states that disclosure of the information which has been withheld would unfairly expose individuals referred to in these documents to pecuniary or other harm (section 21(2)(e)). In particular, the Ministry emphasizes the risks to privacy which would occur if the S.I.N.s are released. All of these considerations favour privacy protection.

Having reviewed the representations of the Ministry and the records, I have made the following findings with respect to those records which contain both the personal information of the appellant **and** other individuals:

- (1) The disclosure of seniority dates and the name of an individual in conjunction with the fact that s/he resigned a position would constitute a presumed unjustified invasion of personal privacy under section 21(3)(d).
- (2) It has been previously established that the disclosure of an individual's S.I.N. would result in an unjustified invasion of that individual's personal privacy under section 21(2)(f).
- (3) None of this information falls within the ambit of section 21(4).
- (4) Accordingly, the exemption in section 49(b) applies to those portions of Records 27, 43, 46 and 89 which remain undisclosed in these appeals and they should not be released to the appellant.
- (5) The undisclosed portions of Records 52, 55, 56 and 68 contain the personal information of individuals other than the appellant, specifically, certain individuals' names, addresses and S.I.N.'s. Record 34 lists a name, the disclosure of which would reveal that this individual was involved in a WCB process.
- (6) I have not been provided with any representations which address any factors favouring the disclosure of the withheld information contained in Records 52, 55, 56 and 68. In the absence of any considerations listed in section 21(2) favouring disclosure, I find that the undisclosed portions of these records must not be released as to do so would constitute an unjustified invasion of personal privacy.

## **REASONABLENESS OF SEARCH**

Where a requester provides sufficient detail about the records to which he or she is seeking access and the Ministry indicates that no responsive documents can be located, it is my responsibility to ensure that the Ministry has made a reasonable search to identify the records which are responsive to the request. While the Act does not require that the Ministry prove to the degree of absolute certainty that such records do not

exist, the search which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

Throughout the course of these appeals, the appellant has maintained that records in addition to those identified pertaining to his 1990 dismissal should exist. In support of this contention, the appellant has provided the Ministry with examples of the types of records sought and some medical documents were subsequently located and disclosed by the Ministry.

The Ministry submits that no further responsive records exist and has provided sworn affidavits from the individuals who conducted the searches for records at the particular jail where the appellant worked as well as at the Ministry's North Bay Human Resources Branch. These affidavits from the jail staff indicate that a search of the appellant's personnel file, P.P.R. (Performance Planning and Review) File and other administrative files at the jail did not yield any records in addition to those already identified. Further, the individual who searched the appellant's corporate personnel file stored at the North Bay Human Resources Branch did not locate any additional records in response to the request.

One of the individuals who swore an affidavit states that the records identified by the appellant would, according to normal business practices, be placed on the personnel file. However, as noted above, a search of the personnel file(s) and administrative files did not yield the records in question.

I have not, however, been provided with any evidence regarding the searches undertaken by the Ministry for records relating to the appellant's dismissal, other than those records contained in the appellant's personnel file. Nor have I been provided with an explanation as why records responsive to the appellant's request do not exist. I find that it is reasonable to assume that records relating to the termination of the appellant's employment, which was followed by a grievance proceeding and subsequent reinstatement, should exist within the Ministry. Accordingly, I must conclude that the search for records undertaken by the Ministry was unreasonable in the circumstances of these appeals as it did not include a search for records created with respect to the appellant's dismissal which may be located in files other than those already searched.

In my view, searches should be undertaken by the Ministry for records relating to the appellant's 1990 dismissal which may be located outside his personnel records. Specifically, records relating to the appellant's grievance which are in the possession of the Grievance Administration and Negotiations Branch of the Ministry should be searched for documents containing information which relate to the appellant's dismissal.

**ORDER:**

1. I uphold the Ministry's decision to deny access to the undisclosed portions of Records 27, 34, 43, 46, 52, 55, 56, 68 and 89.

2. I order the Ministry to conduct a further search of its Grievance Administration and Negotiations Branch for records relating to the appellant's dismissal and to notify the appellant by letter as to the results of this search, within twenty-one (21) days of the date of this order.
3. If, as a result of this further search, the Ministry identifies any further records responsive to the request, I order the Ministry to provide a decision letter to the appellant regarding access to these records in accordance with sections 26 and 29 of the Act, considering the date of this order as the date of the request and without recourse to the time extension.
4. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the decision letter referred to in Provision 3 within twenty-five (25) days of the date of this order. This copy should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_ September 21, 1994 \_\_\_\_\_ Donald Hale  
Inquiry Officer