



Information and Privacy
Commissioner/Ontario

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

ORDER P-768

Appeals P-9400289 and P-9400324

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

This order will dispose of two appeals filed under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Community and Social Services (the Ministry) received two requests for copies of all materials relating to Ministry job competition CRP/TAO 3/94 in which the requesters were unsuccessful candidates. The requesters received access to some general information relating to the competition, as well as to their total scores and rankings. They appealed the Ministry's decision to deny access to the balance of the requested records.

Mediation was not successful and notices that inquiries were being conducted to review the Ministry's decisions were sent to the appellants and to the Ministry. Representations were received from the Ministry for both appeals and the appellant in Appeal P-9400324.

In its representations, which were identical for both appeals, the Ministry agreed to release additional records to the appellants. The Ministry should disclose these records to the appellants if it has not already done so.

The information remaining at issue in these appeals consists of the following:

- (1) the questions posed during the oral interview and written examination;
- (2) ideal/correct answers to the questions with the associated maximum scores possible; and
- (3) the answers given and scores received by the appellants in response to the oral interview questions and written examination.

The Ministry relies on the following exemptions in denying access to this information:

- economic & other interests - sections 18(1)(c) and (f)
- proposed plans, policies or projects of an institution - section 18(1)(g)
- discretion to refuse requester's own information - section 49(a)

DISCUSSION:

ECONOMIC AND OTHER INTERESTS

Section 18(1)(c)

This section of the Act states:

A head may refuse to disclose a record that contains,

information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

In order to qualify for exemption under section 18(1)(c) of the Act, the Ministry must successfully demonstrate a clear and direct linkage between the disclosure of the information contained in the records and the harms alleged which could result in injury to the economic interests or competitive position of an institution.

As indicated previously, the records at issue in these appeals contain the questions posed in the oral interviews and written examination, as well as the correct answers to the questions and possible maximum scores. The records also contain the appellants' responses to all the questions, a breakdown of the scores assigned for the responses and an evaluation of the appellants' communication skills.

In its representations, the Ministry submits that disclosure of the information contained in the records would result in a biased and unfair job competition process. The Ministry further submits that it will be unable to select qualified candidates, which will result in various economic repercussions for the Ministry, including significant increases in unnecessary expenditures.

The Ministry also submits that:

There is evidence that shows these documents, having been released at an earlier date, were copied and circulated by staff to other competing staff to prepare for their interview.

The Ministry has not provided me with the evidence it has referred to in its submissions. In addition, I would query the Ministry's present concerns about disclosure of the records if, as it suggests, the documents have been previously disclosed.

I have reviewed all the records and the Ministry's representations. In my view, I have not been provided with sufficient evidence to conclude that there is a clear and direct linkage between the disclosure of the information contained in the records and the alleged harm to the economic interests of the Ministry. In addition, the Ministry has provided no explanation of how the disclosure of questions and answers in a job competition could specifically prejudice its competitive position. Accordingly, I find that section 18(1)(c) does not apply to exempt the records at issue.

Section 18(1)(f)

In order to qualify for exemption under subsection 18(1)(f) of the Act, the Ministry must establish that a record satisfies each element of a three-part test:

1. the record must contain a plan or plans, **and**

2. the plan or plans must relate to:
 - (i) the management of personnel or
 - (ii) the administration of an institution, **and**
3. the plan or plans must not yet have been put into operation or made public.

[Order P-229]

I will consider part three of the test first.

In my view, section 18(1)(f) is designed to protect "plans" that have not **yet** been put into operation or "plans" that have not **yet** been made public. The section is concerned with the nature and status of the record, rather than the consequences of its disclosure. Therefore, in my opinion, a "plan" that has already been put into operation cannot qualify for exemption under section 18(1)(f), unless it is shown that it has not yet been made public.

The Ministry does not dispute that the questions posed in the interviews and written examinations were used in the past. Its position appears to be that the questions, together with the correct answers, are likely to be used again in future similar competitions, and that the disclosure of all the information contained in the records, including the appellants' answers and scores, could have adverse consequences to the job competition process. The Ministry has not given me any reason to believe that it intends to make public the information at issue and could not be suggesting that the appellants' own answers and scores might be made public in the future.

Therefore, even if I were prepared to accept that the records contain "plans" which relate to the management of personnel or the administration of the Ministry, I am not satisfied that the "plans" have not yet been put into operation, or that they will be made public. Based on my review of the records and the Ministry's representations, it is my view that the information contained in the records does not satisfy part three of the test and, therefore, fails to qualify for exemption under section 18(1)(f) of the Act.

PROPOSED PLANS, POLICIES OR PROJECTS OF AN INSTITUTION

In order for a record to qualify for exemption under section 18(1)(g) of the Act, the Ministry must establish that the record:

1. contains information including proposed plans, policies or projects; and

2. that disclosure of the information could reasonably be expected to result in:
 - (i) premature disclosure of a pending policy decision, **or**
 - (ii) undue financial benefit or loss to a person.

Both elements of this two-part test must be satisfied in order for the exemption to apply.

In its representations relating to part one of the test, the Ministry submits that the records are part of the hiring plan, policy and project of the Ministry; however, it does not specifically refer to the "proposed" component of the wording of the test.

In my view, section 18(1)(g) does not protect "plans", "policies" or "projects" that have already been finalized and put into operation. As discussed above, the records have already been put into operation.

The Ministry's representations focus on the possible consequences of the disclosure of the records. Even if I were prepared to accept that the records are part of the Ministry's hiring "plan", "policy" or "project", and that their disclosure could result in one of the harms identified under part two of the test, I cannot find that the exemption under section 18(1)(g) is satisfied since the information contained in the records is not part of "**proposed** plans, policies or projects". Therefore, I find that part one of the two-part test for exemption under section 18(1)(g) has not been satisfied, and the information contained in the records does not qualify for exemption under this section.

Because I have found that none of the information at issue qualifies for exemption pursuant to the discretionary exemptions claimed by the Ministry, I need not consider the application of section 49(a) of the Act to those records containing the appellants' personal information.

I would also note that in its representations, the Ministry indicates that these appeals differ from the situation which resulted in Order P-426 as the competition at issue in the present appeals relates to the cost containment initiative, that is the Case Review File Initiative launched by the Ministry.

The correct answers for oral and written questions in relation to three other job competitions involving the Ministry were at issue in the appeals which resulted in Order P-426. In that order, Inquiry Officer Asfaw Seife did not uphold the Ministry's claim that sections 18(f) and (g) of the Act applied to the records at issue. He ordered the correct answers to be disclosed.

In my view, whatever distinction there might be between the job competitions which gave rise to Order P-426 and the competition at issue in the present appeals is not relevant to the application of the exemptions

contained in sections 18(1)(f) and (g) of the Act.

ORDER:

1. I order the Ministry to disclose the records at issue to the appellants within fifteen (15) days of the date of this order. These records include those which the Ministry agreed in its submissions could be released to the appellants, as well as those which I have considered in this order.
2. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellants pursuant to Provision 1, **only** upon request.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ September 27, 1994