



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

ORDER P-836

Appeal P-9400356

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 Ministry of the Solicitor General and Correctional Services (the Ministry) received a request for access to a particular memorandum written by a named co-worker of the requester to their supervisor. The memorandum relates to an incident which occurred at their place of work.

Pursuant to section 28 of the Act, the Ministry notified the author of the memorandum and another individual named therein of the request and sought their views regarding disclosure of the memorandum. These individuals objected to disclosure of the memorandum. The Ministry denied access to the memorandum under the following exemption contained in the Act:

- invasion of privacy - section 49(b)

The requester appealed the Ministry's denial of access. A Notice of Inquiry was sent to the Ministry, the appellant and the two individuals notified by the Ministry (the affected persons). Representations were received from the Ministry and the affected persons only.

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 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 reviewed the information contained in the memorandum. I find that it consists of recorded information about the appellant and, therefore, constitutes his personal information. The memorandum also contains some information which pertains to the personal impressions and responses of the affected persons, which constitutes their personal information. I have highlighted this information in yellow on the copy of the memorandum sent to the Ministry with this order.

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.

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) or where a finding is made that section 23 of the Act applies to the personal information.

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) of the Act, as well as all other considerations which are relevant in the circumstances of the case.

The Ministry and the affected persons submit that there are several factors under section 21(2) which favour non-disclosure of the information in the memorandum. They state that:

- the individual to whom the information relates will be exposed unfairly to pecuniary or other harm - section 21(2)(e)
- the information is highly sensitive - section 21(2)(f)
- the information has been supplied in confidence - section 21(2)(h).

In his letter of appeal, the appellant disputes the application of sections 21(2)(f) and (h) for the following reasons:

- the memorandum was discussed with managers, relates to activity in the workplace and was used to secure a reprimand against him
- he has filed a grievance relating to the reprimand and suspects that access to the letter would assist him in his grievance - section 21(2)(d).

Having reviewed the memorandum and the representations of the parties, I make the following findings:

- (1) The personal information of the affected persons which is contained in the memorandum is highly sensitive in nature within the meaning of section 21(2)(f) of the Act. This factor weighs in favour of the non-disclosure of the personal information.
- (2) None of the factors which weigh in favour of disclosure apply to the personal information of the affected persons in the circumstances of this appeal.
- (3) Disclosure of the personal information of the affected persons in the memorandum would constitute an unjustified invasion of their personal privacy as contemplated by section 49(b) and, therefore, the information should not be disclosed to the appellant.

ORDER:

1. I uphold the Ministry's decision to deny access to the personal information of the affected persons which is highlighted on the copy of the memorandum which is being sent to the Ministry's Freedom
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of Information and Privacy Co-ordinator with a copy of this order.

2. I order the Ministry to disclose the portions of the record which are **not** highlighted on the copy of the memorandum provided to the Ministry's Freedom of Information and Privacy Co-ordinator within thirty-five (35) days of the date of this order and not before the thirtieth (30th) day following 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 the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ January 13, 1995