



Information and Privacy
Commissioner/Ontario

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

ORDER P-813

Appeal P-9400117

Ministry of Education and Training



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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 has requested a copy of a report from the Ministry of Education and Training (the Ministry) regarding a named organization. This report was prepared in the context of an inquiry into conflict of interest allegations against individuals in the Literacy Branch of the Ministry. The appellant is an employee of the Literacy Branch.

The record is a 14-page report prepared by the Ministry's Internal Audit Branch, dated June 1993 and entitled "Special Investigation on Conflict of Interest Allegations". The report contains a summary of the audit results, background information, a chronicle of events and an in-depth discussion of the results of the investigation into the allegations.

The Ministry relies on the following exemptions to withhold the report:

- third party information - section 17
- invasion of privacy - sections 21 and 49(b)
- danger to safety or health - section 20

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties. In his representations, the appellant indicated that he also wished to rely on his previous correspondence to the Commissioner's office.

DISCUSSION:

For the purposes of this appeal, I will deal with the invasion of privacy exemption first.

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 report. I find that most of its contents consist of recorded information about the individuals who were the subjects of the inquiry, and therefore constitutes their personal information. The record contains some information which pertains to other identifiable individuals, and constitutes their personal information. Finally, I find that the record also contains the personal information of the appellant. Most of the individuals identified in the report are or were employees of the Ministry.

Previous orders have held that information about an employee does not constitute that individual's personal

information where the information relates to the individual's employment responsibilities or position. Where, however, the information involves an evaluation of the employee's performance or an investigation into his or her conduct, these references are considered to be the individual's personal information.

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 that are relevant in the circumstances of the case.

In its representations, the Ministry submits that the following presumptions apply to all or portions of the record:

- investigation into a possible violation of law - section 21(3)(b)
- employment history - section 21(3)(d)
- finances and income - section 21(3)(f)
- personnel evaluations - section 21(3)(g)
- religious or political associations - section 21(3)(h).

The Ministry further states that there are several factors under section 21(2) which favour non-disclosure of the information in the record. It states that:

- the information is highly sensitive - section 21(2)(f)
- the information has been supplied in confidence - section 21(2)(h).

Finally, after considering whether it would be possible to disclose portions of the record upon removal of the personal identifiers found in it, the Ministry concluded that this would not be possible as the entire report directly relates to these individuals and identification would be possible.

In his correspondence and representations, the appellant indicates that he is entitled to receive a copy of the
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record for the following reasons:

- he initially raised the allegations of conflict of interest
- he provided information to the investigators during their inquiry into the allegations
- he is directly involved in and affected by the events surrounding and leading to the creation of the report
- the individual he accused of conflict of interest was reinstated in his position.

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

1. Some of the information contained in the record relates to previous employment activities of identifiable individuals. I am satisfied, therefore, that the presumption in section 21(3)(d) of the Act (employment history) applies to this information.
2. Disclosure of the information would reveal personal information about individuals referred to in the record which is highly sensitive in nature for the purposes of section 21(2)(f) of the Act. This factor weighs in favour of the non-disclosure of the personal information.
3. None of the factors which weigh in favour of disclosure apply to the personal information in the circumstances of this appeal.
4. I am not satisfied that there exists a compelling public interest in disclosure of the personal information in the record which clearly outweighs the purpose of the section 21 exemption. Accordingly, section 23 of the Act does not apply in this appeal.
5. Disclosure of the personal information in the record would constitute an unjustified invasion of the personal privacy of the individuals referred to in it for the purposes of section 49(b) and therefore the information should not be released to the appellant.

Because I have found the record to be entirely exempt under section 49(b), it is not necessary for me to address the possible application of the other section 21 provisions referred to by the Ministry. Nor is it necessary for me to consider the other exemptions raised in this appeal.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____

Laurel Cropley
Inquiry Officer

_____ December 9, 1994