



Information and Privacy
Commissioner/Ontario

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

ORDER P-878

Appeal P-9400448

Ministry of Citizenship



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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 Citizenship (the Ministry) received a request from counsel acting on behalf of the president of a refugee service for access to a letter sent to a Ministry employee in March 1993. The Ministry identified a three-page letter (the main record) to which was attached another three-page letter (the attachment) as the only records responsive to the request. The Ministry denied access to the records based on the following exemptions contained in the Act:

- invasion of privacy - sections 21(1) and 49(b).

The requester appealed the Ministry's decision. A Notice of Inquiry was provided to the appellant, the Ministry and counsel representing the author of the main record (the affected person). Representations were received from the Ministry only. The appellant chose to rely on information provided in prior correspondence and telephone conversations with the Appeals Officer.

DISCUSSION:

PERSONAL INFORMATION

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 both the main record and the attachment and find that they contain the personal information of the appellant's client and the author of the record.

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 Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny 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.

If none of the presumptions contained in section 21(3) apply, the Ministry 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 presumption contained in section 21(3)(g) (personnel evaluations) applies to the record. The Ministry further states that the following factors under section 21(2) which favour non-disclosure of the information in the records are also relevant in the circumstances of the appeal:

- 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 makes reference to the following considerations contained in section 21(2) of the Act:

- the information is relevant to a fair determination of his client's rights - section 21(2)(d)
- the individual to whom the information relates will be exposed unfairly to pecuniary or other harm - section 21(2)(e)
- the information is unlikely to be accurate or reliable - section 21(2)(g)
- the disclosure may unfairly damage the reputation of any person referred to in the record - section 21(2)(i).

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

- (1) The personal information contained in the records cannot be characterized as "personnel evaluations" for the purposes of the Act. Accordingly, the presumption contained in section 21(3)(g) has no application in the present appeal.
- (2) The factors contained in sections 21(2)(e), (g) and (i) are considerations which favour the protection of privacy, rather than the disclosure of personal information, as asserted by the appellant. Accordingly, these factors are not relevant to the present appeal.
- (3) The attachment is a letter written by the solicitor who was acting on behalf of the appellant's client at that time. I note that the appellant's client was copied on the attachment. Accordingly, I find that the disclosure of the attachment would not result in an unjustified invasion of the personal privacy of another individual and that it should be disclosed to the appellant.
- (4) I am satisfied that the information contained in the main record may be characterized as "highly sensitive" for the purposes of section 21(2)(f). This factor weighs in favour of the non-disclosure of the personal information.

- (5) I have been provided with sufficient evidence to satisfy me that, although not explicitly stated on the face of the main record, there existed an implicit expectation of confidentiality by its author within the meaning of section 21(2)(h).
- (6) It appears that there may exist a legal right related to a proceeding presently being defended on behalf of the appellant's client. Based on the evidence provided to me, I am not convinced, however, that the disclosure of the personal information is **significant** to the determination of the right in question or that it is **required** in order to prepare for the proceeding or to ensure an impartial hearing. I find, therefore, that section 21(2)(d) is not a relevant consideration in this appeal (Order P-312).
- (7) I have found that the only factors which are relevant in the circumstances of this appeal weigh in favour of privacy protection. Accordingly, balancing the appellant's right to access his own personal information against the privacy rights of the author of the main record, I find that its disclosure would constitute an unjustified invasion of the personal privacy of the author and that the main record is exempt from disclosure under section 49(b).

ORDER:

1. I order the Ministry to disclose to the appellant the attachment letter dated July 21, 1992 within thirty-five (35) days of the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
2. I uphold the Ministry's decision to deny access to the main record.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ February 23, 1995