



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

ORDER P-939

Appeal P-9500061

Ministry of the Solicitor General and Correctional Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to an investigation report in the form of a letter dated April 15, 1992 from the Manager of Compliance in the Commissioner's office to the Minister of Correctional Services regarding a privacy complaint made under the Act against an employee of the Ministry.

The Ministry located the responsive record and granted access to it in part, severing references contained in the letter to the gender of the complainant and the office location of the Area Manager who was the subject of the complaint, claiming the following exemption in the Act:

- invasion of privacy - section 21(1).

The requester appealed the Ministry's decision to deny access to the name of the office. A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

INVASION OF PRIVACY

In order to determine whether the disclosure of the information remaining at issue would result in an invasion of privacy, I must first determine whether the information is "personal information" within the meaning of the Act. Personal information is defined, in part, as recorded information about **an identifiable individual**. The information at issue consists of the office location of an Area Manager employed by the Ministry whose conduct was the subject of an investigation by the Compliance Branch of this agency.

I find that in the circumstances of this appeal, the disclosure of the location of the office would be tantamount to identifying both the Area Manager and the complainant when read with the other information which is contained in the disclosed portions of the record.

The appellant submits that the investigation report is concerned with an evaluation of the disclosure practices of the Ministry and not with the performance of the Area Manager and is not, therefore, the personal information of the Area Manager. In Order P-721, Assistant Commissioner Irwin Glasberg made the following observation about the nature of personal information in an employment context. He found that:

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. 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.

I adopt the approach taken by Assistant Commissioner Glasberg to the definition of personal information for the purposes of this order. The complaint, as described in the record, concerned the disclosure of the complainant's personal information by the Area Manager and did not challenge a specific Ministry policy or practice. I find that the record involves an investigation into the conduct of an employee of the Ministry rather than an allegation made about the Ministry itself.

In summary, I find that the information which remains at issue may properly be characterized as the personal information of the Area Manager and the complainant. The information does not relate to the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

Section 21(1)(f) of the Act states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that the section 21(1)(f) exception applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

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 Ministry 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.

I have not received any submissions from the appellant in support of her argument that the disclosure of the name of the office location would not constitute an unjustified invasion of personal privacy. Rather, the appellant has attempted to rebut the submissions which she anticipates that the Ministry will make. The appellant has not provided me with any evidence that factors under section 21(2) or any unlisted considerations which favour disclosure are applicable in the circumstances of this appeal. Neither has the appellant raised the application of sections 21(4) or 23 to the information.

The Ministry argues that the disclosure of the information at issue would reveal employment and education-

related personal information about the Area Manager and the complainant which would constitute a presumed unjustified invasion of personal privacy under section 21(3)(d). The Ministry further submits that the following considerations listed under section 21(2) are relevant to support the view that the disclosure of the personal information of the affected person **would** constitute an unjustified invasion of personal privacy:

- the individual to whom the information relates will be unfairly exposed to pecuniary or other harm - section 21(2)(e); and
- the disclosure may unfairly damage the reputation of any person referred to in the record - section 21(2)(i).

Based on my review of the submissions of the parties, and in the absence of any considerations weighing in favour of the disclosure of the information, I find that the exception contained in section 21(1)(f) does not apply. The personal information is, therefore, exempt pursuant to the mandatory exemption provided by section 21 of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ June 12, 1995