



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

# ORDER P-990

Appeal P-9500174

Ministry of Labour



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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 Labour (the Ministry) received a request for access to copies of all records concerning the Ministry's investigation of a complaint made under the Employment Standards Act by a named individual (the affected person) against his former employer. The complaint was upheld. The affected person is now suing his former employer for wrongful dismissal.

The request was made by a representative of the employer.

The Ministry notified the affected person of the request. He objected to the release of his personal information. The Ministry granted partial access to the requested documentation. Portions of the records were not disclosed on the basis of the following exemption in the Act:

- invasion of privacy - section 21

The requester appealed this decision.

During mediation, the appellant limited the scope of the appeal to the following records:

- notes of interviews conducted by the Employment Standards Officer at the Ministry during the course of her investigation;
- notes of interviews conducted by the affected person's counsel;
- letters to the affected person's counsel;
- a Crown Brief Synopsis;
- a "will say" statement of a witness; and
- notes made by the affected person.

A Notice of Inquiry was provided to the appellant, the Ministry and the affected person. Representations were received from all parties.

## 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 any identifying number assigned to the individual and 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 in the records and I find that it satisfies the definition of "personal information" in section 2(1) of the Act. The personal information relates to the affected person and other individuals.

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.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 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 circumstances that are relevant in the circumstances of the case.

The Ministry submits that disclosure of the information in the records would give rise to a presumed unjustified invasion of personal privacy on the basis of sections 21(3)(b) and (d) of the Act. These sections state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (d) relates to employment or educational history.

With respect to section 21(3)(b), the Ministry submits that the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law under the Employment Standards Act. The Ministry explains that all of the records at issue were either supplied to the Employment Standards Officer by the affected person's counsel or prepared by the Officer in the course of investigating the affected person's claim.

The appellant maintains that disclosure of the information is relevant to a fair determination of his client's rights in defending the affected person's wrongful dismissal claim (section 21(2)(d) of the Act).

I have reviewed the representations of the parties together with the information in the records and I make the following findings:

- (1) The personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law, i.e. the Employment Standards Act. Accordingly, the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b) of the Act.
- (2) The consideration raised by the appellant in section 21(2)(d) of the Act cannot rebut the presumption in section 21(3)(b) (Order M-170).
- (3) Section 21(4) does not apply to the information and the appellant has not raised the possible application of section 23 of the Act.
- (4) Accordingly, I find that disclosure of the personal information which has been withheld would constitute an unjustified invasion of personal privacy of the affected person and other individuals and is properly exempt under section 21(1) of the Act.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ August 31, 1995