



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

# **ORDER P-1045**

## **Appeal P-9500446**

### **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 the interview results for herself and the other candidates in a job competition in which the appellant was an unsuccessful candidate.

The Ministry located records responsive to the request and granted partial access to them. Access was denied to information pertaining to four other candidates on the basis of the exemption in section 49(b) of the Act (invasion of privacy).

The requester appealed this decision. In her letter of appeal, the requester (now the appellant) indicated that she was not interested in obtaining the names of the other candidates. She indicated further that she was only interested in receiving the scores for the other four candidates.

A Notice of Inquiry was provided to the Ministry, the appellant and the four other candidates in the job competition (the affected parties). Representations were received from the appellant and two affected parties. The Ministry indicated that it would not be submitting representations in regard to this appeal. Both affected parties objected to the disclosure of their personal information.

The information at issue is found on a one-page Competition Report Form. Partial access was provided to this document, with information pertaining to the four other candidates withheld. The only information at issue on this record consists of the scores given to the other four candidates which are contained in the second to last column of a table. This column is entitled "Consensus Ranking".

## **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 record at issue. In my view, the record consists of recorded information about the appellant and other individuals. The portion of the record which has been withheld pertains only to individuals other than the appellant. Given the small number of candidates interviewed in this competition, I am of the view that, even with the names and identifiers removed, this information could be related to identifiable individuals and I find, therefore, that all of it constitutes personal information.

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 the requester access to that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether 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 that are relevant in the circumstances of the case.

The Ministry did not provide representations on this issue. Nor does its decision letter refer to any part of section 21.

Many previous orders of the Commissioner's office have dealt with requests for information contained in job competition files generally, and pertaining to the scores awarded to individual candidates (Orders P-485, P-722, P-924 and P-940).

In Order P-722, Inquiry Officer Donald Hale found that interview scores constituted personnel evaluations and the presumption in section 21(3)(g) applied to them. I agree with this interpretation, and I adopt it for the purposes of this order.

In my view, the presumed unjustified invasion of personal privacy in section 21(3)(g), relating to personnel evaluations (and other types of references, recommendations and evaluations) applies to the scores as identified in the consensus ranking column of the table.

In her representations, the appellant questions the fairness of the calculation of the interview results in the competition referred to in her request. This appears to raise the possible application of section 21(2)(a), which applies where disclosure is desirable for the purpose of subjecting the activities of the Ontario government and its agencies to public scrutiny. However, even if I found that this factor applied in the circumstances of this appeal, the Divisional Court's decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that the factors in section 21(2) cannot be used to rebut the presumption in section 21(3).

I find that sections 21(4) and 23 do not apply to the information which is subject to the presumption in section 21(3)(g), and accordingly, I find that the exemption in section 49(b) applies to the consensus ranking scores of the other candidates.

## **ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_

\_\_\_\_\_ November 8, 1995

Laurel Cropley  
Inquiry Officer