



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

# **ORDER P-1018**

**Appeal P-9500242**

**Ontario Hydro**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). Ontario Hydro (Hydro) received a request from a union and its President jointly (the appellants) for the addresses and telephone numbers of all members of the Pension and Insurance Fund of Ontario Hydro (the Pension Plan), including all persons in receipt of benefits, whether or not they continue to be employed by Hydro. Counsel for the appellants submitted the request on their behalf. Hydro denied access to the requested information on the basis of section 21(1) of the Act (invasion of privacy). The appellants appealed this decision.

The record at issue consists of a listing of the names, addresses and telephone numbers of approximately 40,000 individuals.

A Notice of Inquiry was provided to Hydro and the appellants. Representations were received from both parties. During the inquiry stage, counsel for the appellants indicated that the address and telephone number of the union President (one of the appellants) was not to be included as part of this request and appeal.

In order to understand the appellants' position in this appeal, I have briefly outlined some background relating to the Pension Plan and the involvement of the union with respect to it.

## **BACKGROUND:**

The union represents approximately 24,000 members of the Pension Plan, including both active and retired employees. As I indicated above, the record contains approximately 40,000 names of active and retired employees who are members of the Pension Plan.

The union has been involved in litigation with Hydro since 1986 regarding Hydro's statutory funding obligations of the Pension Plan under the Power Corporation Act (the PCA).

During the course of one of the proceedings between the union and Hydro, these two parties entered into a settlement agreement regarding one of the issues in litigation, largely as a result of collective bargaining negotiations. It was agreed that the settlement agreement was to be applicable to **all** members of the Pension Plan, whether or not they were members of the union.

Following this, a second settlement agreement was entered into by the union and Hydro. This agreement was conditional on the union obtaining a representation order or other order from the court to ensure that the settlement would be binding on **all** current and former Pension Plan members. In this regard, Hydro notified all current and former members of the Pension Plan of the proposed settlement, and this agreement was subsequently approved by court order in November, 1991.

The current collective agreement between the union and Hydro established a joint Pension and Insurance Committee, consisting of both union members and Hydro Management members. The role of this committee is, in part, to monitor and make recommendations regarding Hydro's administration of the Pension Plan, and to promote awareness and understanding of the Pension Plan on the part of its members.

Although the settlement agreement resolved some issues in dispute between the union and Hydro, the litigation between them continues.

With this background information in mind, I will now turn my discussion to the issues raised in this appeal.

## **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 the address and telephone number of 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.

The names of the members of the Pension Plan were not specifically mentioned in the request, however the appellants have clarified that the names are to be included. In accordance with the definition of "personal information" referred to above, I find that the record contains the personal information of the individuals identified in it. Since the address and telephone number of the union's President have been removed from the scope of this appeal, I find that none of the personal information contained in the records pertains to him.

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 institution 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.

### **Hydro's Position**

Hydro claims that disclosure of the information contained in the record would constitute a presumed unjustified invasion of privacy as this information relates to employment history (section 21(3)(d)), and it indirectly describes financial information relevant to the members of the Fund (section 21(3)(f)). Hydro also claims that the following factors which weigh in favour of privacy protection are applicable to the information contained in the record:

- the individual to whom the information relates will be exposed unfairly to pecuniary or other harm (section 21(2)(e));
- the personal information is highly sensitive (section 21(2)(f));

- the personal information has been supplied by the individual to whom the information relates in confidence (section 21(2)(h)).

In this regard, Hydro submits that employees provide their addresses and telephone numbers to Hydro with the expectation that they will remain confidential and will only be used or disclosed for bona fide business use or emergency contact. The normal business contact with current employees is at the workplace. Moreover, a mechanism currently exists for the union to contact its own members within the workplace.

Hydro submits further that current employees not represented by the union and former employees, including retirees who are not represented by the union, would not expect to be contacted by the union at home or in the workplace.

Hydro indicates that under the PCA, it has a statutory duty to provide prescribed information to the Pension Plan members, and submits that members would not expect that their addresses or telephone numbers will be used or disclosed for any other purpose.

Hydro also argues that disclosure of the record to the union would allow the union to not only contact these individuals directly at home, but would provide it with a mailing list which could then be used by the union for purposes unrelated to those identified in this appeal.

### **The Appellants' Position**

The appellants claim that the following three factors which weigh in favour of disclosure are applicable in the circumstances of this appeal:

- the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny (section 21(2)(a));
- access to the personal information will promote informed choice in the purchase of goods and services (section 21(2)(c));
- the personal information is relevant to a fair determination of rights affecting the person who made the request (section 21(2)(d)).

As I indicated above in my background discussion, the appellants have provided extensive information regarding litigation involving the Pension Plan, their role in monitoring Hydro's administration of the Pension Plan and their relationship to all employees and former employees of Hydro, regardless of their membership in the union. This information was provided by the appellants in support of their position.

The appellants submit that because of the union's role with respect to the Pension Plan, it is charged with bargaining for and protecting the benefits of members of the Pension Plan and it, therefore, has a legitimate interest in communicating with current and former employees of Hydro for purposes related to the Pension Plan.

In this regard, the appellants submit that only through communication with the Pension Plan's members can the union ensure that they are receiving a fair and accurate account of the administration of the Plan. Moreover, the appellants argue, the public in general has a right to know how Hydro's funds are being spent.

The appellants take the view that, as consumers, the members of the Pension Plan have a right to know both from the perspective of the union and the rest of the administrators of the Plan, whether they are getting good service for their money.

Finally, the appellants argue that the information contained in the record is necessary to allow the union and its President to communicate with the persons that it represents in the litigation in which they are involved and with other persons who would be affected by the litigation.

### **Findings**

I have considered the submissions of the parties and I make the following findings:

1. Previous orders of the Commissioner's office have held that an individual's name and title, as well as employer and position held, without more, do not constitute "employment history" within the meaning of section 21(3)(d) (Orders P-216 and P-235). Although, in the current appeal, an individual must be an employee/former employee to be included in the record, that is where the connection to employment ends. Moreover, the addresses and telephone numbers of the members of the Pension Plan have no relation to employment history. Accordingly, section 21(3)(d) does not apply to the information contained in the records.
2. Similarly, the mere fact that an employee/former employee received employment or pension income does not **describe** in any way, financial information about that person within the meaning of section 21(3)(f), and I find that this presumption against disclosure does not apply to the information contained in the records.
3. Hydro has not provided sufficient evidence to establish that sections 21(2)(e) and (f) apply in the circumstances of this appeal.
4. In my view, it is reasonable that employees would expect that their addresses and telephone numbers would be treated confidentially. It is also reasonable to expect, as Hydro submits, that this information would only be used for reasons consistent with the limited purpose of providing that information about the Pension Plan which is prescribed to be provided by law, thereby creating an expectation of confidentiality.

Moreover, I have reviewed the portion of the collective agreement relating to the joint committee which was provided by the appellants. I note that the joint committee is to

function in an advisory capacity only, and that the terms of the agreement specifically restrict access by committee members to personal information regarding specific members of the Pension Plan. In my view, this is consistent with an expectation of confidentiality held on the part of members of the Pension Plan.

Accordingly, I find that section 21(2)(h) is applicable in the circumstances of this appeal, weighing against disclosure of the information in the record.

5. I do not accept the appellants' argument that disclosure of the information in the record is desirable for the purpose of subjecting the activities of Hydro to public scrutiny. In my view, in the circumstances of this appeal, the appellants' interests are of a private nature relating to the union's involvement in pension matters. In addition, the information at issue relates to the employees and former employees of Hydro and not to the conduct of Hydro. Accordingly, I find that section 21(2)(a) is not applicable in the circumstances of this appeal.
6. With respect to the appellants' arguments pertaining to the factor in section 21(2)(c), I agree that, as consumers, it is desirable that the members of the Pension Plan be given adequate information about their Plan. However, in my view, it is not necessary for the union to contact them directly to impart this information. The members of the Pension Plan already receive the necessary information through normal notification procedures in accordance with the requirements of the PCA. While I understand that the union may wish them to receive other information about the Plan, this is not sufficient justification for disclosure of the personal information of the members. Accordingly, I find that this factor does not apply in the circumstances of this appeal.
7. While I acknowledge that the appellants are currently involved in litigation with Hydro regarding the Pension Plan, I am not satisfied that disclosure of the personal information in the record has any bearing on the determination of the issues in the litigation or that the parties would not be able to prepare for or ensure an impartial hearing on the issues. Accordingly, I find that section 21(2)(d) is not applicable in the circumstances of this appeal.

I have found that one factor which weighs in favour of privacy protection is applicable to the information contained in the records. I have found that no factors which weigh in favour of disclosure apply to this information. Accordingly, I find that disclosure of the personal information in the record would constitute an unjustified invasion of personal privacy and the record is exempt from disclosure under section 21(1).

**ORDER:**

I uphold Hydro's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ October 11, 1995