



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

ORDER P-1055

Appeal P-9500140

Ministry of Agriculture, Food and Rural Affairs



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NATURE OF THE APPEAL:

The Ministry of Agriculture, Food and Rural Affairs (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to the employment subcontract of a named veterinarian working at a certain location for specified period of time.

Partial access was granted. The Ministry denied access to Record 9 (a letter dated July 9, 1994), Record 11 (a memorandum dated July 22, 1994) and Record 12 (a letter dated September 26, 1994) under the following exemption contained in the Act:

- invasion of privacy - section 21

The requester appealed the Ministry's decision to deny access. A Notice of Inquiry was sent to the Ministry, the appellant and to three individuals identified in the records (the affected parties). Because the records appeared to contain the personal information of the appellant, the application of section 49(b) of the Act was also included in the Notice of Inquiry. Representations were received from the Ministry and one of the affected parties.

PRELIMINARY MATTER:

LATE RAISING OF DISCRETIONARY EXEMPTIONS

On March 22, 1995, the Commissioner's office provided the Ministry with a Confirmation of Appeal that indicated that an appeal from the Ministry's decision had been received. The Confirmation of Appeal also indicated that based on a policy adopted by the Commissioner's office, the Ministry would have 35 days from the date of the confirmation (that is, until April 26, 1995) to raise any additional discretionary exemptions not claimed in the decision letter. No additional exemptions were raised during this period.

It was only in the Ministry's representations received on August 9, 1995 that the right to fair trial exemption (section 14(1)(f) of the Act) was raised with respect to the records.

Previous orders of the Commissioner's office have determined that the Commissioner or his delegate has the power to control the manner in which the inquiry process is undertaken (Orders P-345 and P-537). This includes the authority to set the time limits for the receipt of representations and a limit on the time during which an institution can raise new discretionary exemptions not originally raised in the decision letter.

Past orders have held that the prompt identification of discretionary exemptions is necessary to maintain the integrity of the appeals process. In its representations, the Ministry has provided no evidence of "extenuating circumstances" that could have lead to the delay in claiming the discretionary exemption 104 days beyond the time limit set out in the Confirmation of Appeal. Therefore, I will not consider the application of section 14(1)(f) of the Act to the records.

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 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 records at issue and I find that they contain the personal information of the appellant **and** the affected parties.

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 exemptions 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 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 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 institution 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.

The Ministry submits that the information contained in the records falls within the presumption under 21(3)(d) because it relates to the employment history of an individual other than the appellant. The Ministry also argues that the information contained in all the records is highly sensitive (section 21(2)(f)), that the information contained in Record 12 was supplied in confidence (21(2)(h)), and that disclosure of the records may result in unfair damage to the reputation of a person referred to in the records (21(2)(i)).

I have reviewed the records together with the representations of the Ministry and the affected person. All of the records contain information relating to allegations of improper professional conduct against one of the affected parties. I find that this information in the records is highly sensitive and therefore section 21(2)(f) of the Act, which weighs in favour of the protection of privacy, is a relevant consideration.

I find no factors that weigh in favour of disclosure. I have considered all the factors in section 21(2) together with all relevant circumstances of the case and I find that disclosure of the personal information in the records would result in an unjustified invasion of the personal privacy of the affected parties under section 21(1). I find, therefore, that section 49(b) applies to the personal information in the records.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ November 21, 1995