



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

ORDER P-1086

Appeal P-9500359

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The requester is an employee of the Ministry of Community and Social Services (the Ministry), who filed a grievance against her supervisor. While this grievance was in process, the requester's supervisor filed a separate grievance against his supervisor. Before either grievance had been resolved, the requester submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records which referred to her by name, in the possession of certain named Ministry employees, including her supervisor and his supervisor.

The Ministry identified a large number of responsive records, some of which were disclosed to the requester in full, others in part, and others denied on the basis of one or more of the following exemptions contained in the Act:

- advice to government - section 13(1)
- economic and other interests - sections 18(1)(f) and (g)
- personal privacy - exceptions to right of access to own personal information - sections 49(a) and (b)

The requester appealed the Ministry's decision with respect to 60 of the records in the possession of either her supervisor, his supervisor, or one other employee identified in her request. Many of these records are duplicates.

A Notice of Inquiry was sent to the appellant, the Ministry, the appellant's supervisor (affected person A), his supervisor (affected person B), and the third employee (affected person C). Representations were received from the Ministry only.

Many of the records at issue in this appeal are duplicates. Using affected person A's records as the core group, I have identified duplicates from the files of affected persons B and C, so as to narrow the actual number of different records.

As a result of this grouping, there are 26 records at issue (the bracketed record refers to a duplicate):

A--1 (B--6), A--2 (B--45), A--6 (B--9), A--7 (B--40), A--12 (B--14, C--57-63),
A--13, A--14, A--16, A--19 (B--17, C--47-48), A--21, A--22, A--23 (B--23, C--
43-44), A--24 (B--21, C--36-42), A--27 (B--22, C--25-29), A--28 (B--27), A--
29, and A--30.

B--15, B--24, B--36, B--39, B--46, B--61.

C--30, C--49-50, C--79.

In its representations the Ministry withdrew its exemption claims under section 13(1) and sections 18(1)(f) and (g). Some records which were exempted under one or more of these sections were also exempted under section 49(b) of the Act, and others were not. I have reviewed the eight records which were subject only to section 13(1) and/or sections 18(1)(f) and/or (g) to determine if any of them

contain the personal information of any individual other than the appellant, and thereby raise the possible application of section 49(b).

An exemption claim under section 49(a) depends on the establishment of the requirements of one of the exemptions listed in that section. This listing includes sections 13(1), 18(1)(f) and (g) and, because these claims have been withdrawn by the Ministry, section 49(a) is also no longer at issue in this appeal.

The only exemption claim remaining at issue is section 49(b).

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including private or confidential correspondence about an individual submitted to an institution, and views and opinions of one individual about another individual.

The following eight records have not been exempted by the Ministry under section 49(b) of the Act:
A--16, A--21, A--22, A--28 (B--27), A--29, A--30, B--36 and C--79.

I have reviewed these records and find that all of them, with the exception of Record A--28 (B--27), contain the personal information of the appellant only. These records are e-mail messages between affected persons A and B, and concern aspects of their normal professional responsibilities, and do not contain their personal information. Because these records are no longer subject to any exemption claim, they should be disclosed to the appellant.

The Ministry submits that the rest of the records which remain at issue in this appeal concern the employment relationship between affected persons A and B in the context of affected person A's grievance. The Ministry submits that these records contain information which falls within the definition of personal information under section 2(1) of the Act. I agree. These records deal with correspondence between these two individuals dealing with the subject matter of affected person A's grievance, contain opinions of each individual about the other's professional action, and/or concern performance management issues. I find that Record A--28 (B--27) contains similar information. As such, I find that all of the records exempted by the Ministry under section 49(b), as well as Record A--28 (B--27), contain the personal information of both affected persons A and B. Affected person A's grievance relates, in part, to his ongoing relationship with the appellant. As such, all of the records make reference to the appellant, and I find that they also contain her personal information.

INVASION OF PRIVACY

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 exceptions 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 institution determines that the disclosure of the information would constitute

an unjustified invasion of another individual's personal privacy, the institution 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 that are relevant in the circumstances of the case.

Unfortunately, neither the appellant nor any of the affected persons submitted representations in this appeal. The Ministry's representations submit that certain records contain information concerning the gist of affected person A's grievance, and the rest concern the employment practices of affected persons A and B, and personnel evaluations.

Having reviewed the relevant statutory provisions and the Ministry's representations, I have made the following findings:

- None of the presumptions contained in section 21(3) are applicable in the circumstances of this appeal.
- The personal information of affected persons A and B contained in all of the records deals with matters leading to or arising from affected person A's grievance, and can accurately be characterized as highly sensitive (section 21(2)(f)), and likely to have been supplied to each other in confidence (section 21(2)(h)). These factors both favour non-disclosure.
- The only factor listed in section 21(2) which potentially favours disclosure is that the information contained in the records is relevant to a fair determination of rights affecting the appellant (section 21(2)(d), specifically her grievance. In the absence of representations from the appellant, I find that this factor has limited relevance in the circumstances of this appeal.
- I have not been provided with sufficient evidence to establish the relevance of any unlisted factors under section 21(2) which favour disclosure.
- Having balanced the various factors under sections 21(2) and considered the circumstances of this appeal, I find that disclosure of the information contained in the records would constitute an unjustified invasion of the personal privacy of affected persons A and/or B.

Therefore, I find that the records which contain the personal information of both the appellant and affected persons A and/or B qualify for exemption under section 49(b) of the Act.

ORDER:

1. I order the Ministry to disclose Records A--16, A--21, A--22, A--29, A--30, B--36 and C--79 to the appellant within thirty-five (35) days following the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
2. I uphold the decision of the Ministry not to disclose the remaining records.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ December 21, 1995