



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1124

Appeal P-9500129

Ministry of the Attorney General



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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 Attorney General (the Ministry) received a request from a newspaper reporter. The request was for all documents, to and from the Assistant Deputy Attorney General or any other senior ministry official, relating to an anti-racism training course for provincial prosecutors. The requester also asked for documents relating to the expenditure of public funds for this project.

The Ministry located 19 records which were responsive to the request. Under section 28 of the Act, the Ministry gave notice of the request to the two firms who submitted proposals for the project, indicating that it was considering disclosure of the records pertaining to them, and inviting comments on the possible application of the exemptions in sections 17(1) (third party information) and 21 (invasion of privacy). In response to the notice, a representative of one firm (the unsuccessful bidder) consented to disclosure of records relating to its firm's proposal. The Co-ordinating Associate (the associate) of the second firm (the successful bidder) objected to disclosure of the majority of the records. He consented to the disclosure of a number of handouts used in the training course.

The Ministry advised the affected parties that only the information to which consent to disclose was given would be released to the requester, subject to severances which it intended to make to the portions of the records which contained personal information.

The Ministry then granted the requester full access to two of the records (Records 6 and 7). The Ministry denied access to the remaining records, in whole or in part, on the basis of the following exemptions in the Act:

- advice or recommendations - section 13(1)
- third party information - section 17(1)
- solicitor-client privilege - section 19
- invasion of privacy - section 21(1)
- information published or available - section 22(a).

The requester appealed the decision to deny access. She also believes that more records should exist regarding the expenditure of public funds for this project. The appeal of the Ministry's decision was filed on behalf of the requester (now the appellant) by her counsel.

The records at issue are identified in the attached appendix. The Ministry has indexed the records in such a way as to indicate record number and page number respectively. Under this system, Record 1, page two, is described as "page 1-2". I have retained this method of numbering the records for the purposes of this appeal.

During mediation, the appellant indicated that she was not interested in pursuing access to the following portions of the records:

- the personal information which was severed from Records 2-1 and 5-9. The remaining portions of these records were released to the appellant. Accordingly, records 2-1 and 5-9 are no longer at issue in this appeal;

- all of Record 9, which consists of 11 pages of press clippings. Section 22(a) was applied to this record only. Accordingly, neither Record 9 nor section 22(a) is at issue in this appeal.

The attached index reflects the withdrawal of the above three records from the records at issue.

A Notice of Inquiry was sent to the Ministry, the appellant, and the two firms (the successful and unsuccessful bidders). A Notice of Inquiry was also sent to 21 individuals who attended the anti-racism training course (the affected parties).

Representations were received from the Ministry and nine of the 21 affected parties. The appellant's counsel indicated that he wished his letter of appeal to be considered as his representations. Neither of the two firms submitted representations to this office. The successful bidder's response to the Ministry's notice under section 28, however, details its objections to disclosure. I will consider this correspondence in my review of the issues in this appeal.

During the Inquiry stage, the Appeals Officer contacted the appellant regarding the issues surrounding her claim that more records should exist pertaining to the expenditure of public funds. The Ministry did not appear to fully address this part of the request in its decision letter, and the issue was not raised in the Notice of Inquiry. The appellant agreed not to pursue this issue in the current appeal, but reserves her right to make a further access request for the information. Accordingly, I will restrict my discussion in this order to the application of the exemptions claimed by the Ministry to withhold the records at issue.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

The Ministry claims that section 13(1) applies to exempt Records 1 and 12 in their entirety, and to exempt parts of Records 13, 15 and 18.

Section 13(1) of the Act states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It was established in Order 118, and followed in many subsequent orders, that advice and recommendations for the purpose of section 13(1) must contain more than just information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process. Information that would permit the drawing of accurate inferences as to the nature of the actual advice or recommendation given also qualifies for exemption under section 13(1) of the Act.

The Ministry submits that the terms “advice” and “recommendations” must be considered to have separate and distinct meanings. It suggests that “recommendations” be defined as the “submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process”. “Advice”, it submits, must encompass information provided to a decision maker to assist him or her in deciding on the proper course of action to take.

The Ministry argues that the most vulnerable part of the deliberative process is not the recommendations put forth, but rather the flow of opinions and advice regarding the facts and circumstances that should be considered by a decision-maker in making an informed decision.

In my view, this argument was addressed in Order 94, in which former Commissioner Sidney B. Linden commented on the scope of the exemption in section 13(1) of the Act. He stated that “this exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making or policy-making.”

In accordance with the rules of statutory interpretation, I accept that the use of both terms in the same provision would indicate that separate and distinct meanings should be given to each term. I also agree that “advice” would appear to encompass a broader class of information than “recommendations”, which in my view, directly relates to the submission of a specific course of action. However, whether the information is a recommendation suggesting a particular course of action, or whether it is in the nature of advising a decision-maker in a more general sense on an issue, it must relate to a suggested course of action under consideration which a decision-maker may accept or reject during the deliberative process.

With these comments in mind I will now discuss each record in turn.

Record 1

Record 1, which has been exempted in its entirety, is a draft of Record 2 (which was disclosed to the appellant). The record is titled “Request for Proposal for Investment Strategy Anti-racism Crown Training” (the RFP). The Ministry submits that the draft version of the RFP was prepared by a public servant and constitutes his or her advice to senior Ministry officials as to the means of obtaining suitable proposals for race relations training. The Ministry submits further that this draft proposal was to be accepted or rejected as part of the deliberative process in determining the form of the RFP.

Assistant Commissioner Tom Mitchinson considered the meaning of the phrase “deliberative process of government decision-making” in Order P-434. He stated:

In my view, the deliberative process of government decision-making and policy-making referred to by Commissioner Linden in Order 94 does not extend to communications between public servants which relate exclusively to matters which have no relation to the actual business of the Ministry. The pages of the record which have been exempt[ed] by the Ministry under section 13(1) in this appeal all deal with a human resource issue involving the appellant and, in my

view, to find that this type of information is exemptible under section 13(1) of the Act would be to extend the exemption beyond its purpose and intent.

I agree with these comments. In my view, the RFP was prepared for internal training purposes and as such is unrelated to the actual business of the Ministry. Accordingly, I find that it is not the type of draft information which qualifies for exemption under section 13(1).

As no other exemptions have been claimed for Record 1 it should be disclosed to the appellant.

Record 12

Pages 12-1 to 12-45 consist of memoranda from Ministry staff who attended the anti-racism training sessions. The Ministry submits that these memoranda contain the advice and recommendations to senior Ministry officials regarding the continuation and content of the training.

In my view, although these memoranda contain the views and opinions of their authors regarding the content of the training course and its continuation, this does not amount to advice or recommendations within the meaning of section 13(1). Accordingly, Record 12 does not qualify for exemption.

Record 13

The Ministry has withheld pages 13-1 to 13-24, 13-26 to 13-29 and 13-39 to 13-47 under section 13(1). These pages consist of memoranda between various Ministry staff regarding statements made by the associate (of the successful bidder) and the content of the anti-racism course. The Ministry submits that each memorandum contains the advice of a civil servant regarding the Ministry's deliberative process surrounding the future of the anti-racism training provided by the successful bidder.

In reviewing these memoranda I find that the following pages do not contain advice or recommendations as contemplated by section 13(1) of the Act: pages 13-1, 13-2, the top two paragraphs of page 13-3, pages 13-5 to 13-11, 13-17 to 13-20, 13-26 to 13-29, 13-39 to 13-41, pages 13-42 and 13-43 with the exception of the third and fourth paragraphs, and pages 13-45 to 13-47. Accordingly, these pages do not qualify for exemption under this section. As no other exemption has been claimed for these pages, they should be disclosed to the appellant.

In my view, however, portions of the records do contain advice and recommendations relating to the deliberative process of the Ministry in responding to the public concern regarding its internal programs. Therefore, I find that the following portions of the records qualify for exemption under section 13(1): the bottom three points on page 13-3, pages 13-4, 13-12 to 13-16, 13-21, 13_22 (pages 13-23 and 13-24 are duplicates of 13-21 and 13-22) and 13-44, and the third and fourth paragraphs on pages 13-42 and 13-43.

Record 15

The Ministry released pages 15-1 and 15-2. Page 15-3 is a draft news release. The final version of the news release was disclosed to the appellant. I am satisfied that the draft version contains the advice of a public servant as to the form and content of the news release and thus qualifies for exemption under section 13(1).

Pages 15-4 to 15-9 consist of memoranda concerning media queries regarding the anti-racism training course and responses to them. The Ministry submits that the questions and suggested answers made in response to them contain or would reveal advice as to what information should be given to the media.

In my view, pages 15-4 to 15-9 contain specific advice between public servants concerning a strategy to be adopted by the Ministry in responding to these questions. As such, I find that this information qualifies as advice for the purposes of section 13(1). I find further that disclosure of the questions would reveal this advice. Accordingly, I find that these pages qualify for exemption under section 13(1) in their entirety.

Record 18

Within this record, pages 18-4 and 18-24 are handwritten notes which refer to Briefing Notes. Page 18-17 is a memorandum regarding media calls. The remaining pages consist of Critical Issue Sheets (pages 18-1 to 18-3, 18-6 to 18-23 and 18-25 to 18-34), and a memorandum (pages 18-35 to 18-37) from the Assistant Deputy Attorney General which outlines information for inclusion in a Briefing Note for the Minister.

I find that all of the pages in Record 18 contain advice and recommendations for the purposes of section 13(1), or contain information which, if disclosed, would permit the drawing of accurate inferences as to the actual advice and recommendations given. In my view, this information falls within the scope of the "free-flow of advice and recommendations within the deliberative process of government decision-making" which section 13(1) was intended to protect. Therefore, I find that Record 18 is exempt from disclosure in its entirety.

I have highlighted in yellow on the copy of Record 13, which is being sent to the Ministry's Freedom of Information and Privacy Coordinator, the portions of pages 13-3, 13-42 and 13-43 which I have found to be exempt under section 13(1).

The Ministry claims that section 19 also applies to exempt pages 13-21 to 13-24, 15-4 to 15-9 and Record 18. However, because of the findings I have made under section 13(1) above, it is not necessary for me to consider the possible application of section Record 19 to these pages.

THIRD PARTY INFORMATION

The Ministry claims that the exemption in section 17 applies to Record 3, and pages 8-4, 10-3, 10-6 to 10-8, 10-13, 10-15, 10-17, 10-19, 10-21 to 10-23 and Record 19.

For a record to qualify for exemption under section 17(1)(a), (b) or (c), the Ministry and/or the successful bidder must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 17(1) will occur.

All parts of this three-part test must be satisfied.

Record 3

Record 3 is a 34-page proposal and covering letter tendered by the successful bidder in response to the RFP. The proposal contains a number of distinct parts, and is broken down as follows:

- 3-1 covering letter
- 3-2 title page
- 3-3 table of contents
- 3-4 excerpt from a report
- 3-5 executive summary
- 3-6 introduction
- 3-7 purpose of this project
- 3-8 to 3-9 context for the project
- 3-10 to 3-12 methodology
- 3-13 timetable
- 3-14 consulting team profile
- 3-15 budget
- 3-16 consulting arrangements
- 3-17 to 3-33 resumes of consultants
- 3-34 statement of Canadian content

In my view, pages 3-17 to 3-33 contain information which are more appropriately dealt with under section 21 of the Act, the discussion of which immediately follows. Accordingly, I will not address these pages in my discussion of section 17.

Record 8

Page 8-4, titled "Overall Objectives", forms part of the program package developed by the successful bidder.

Record 10

This record package consists of a number of different types of "handouts". Page 10-3 is a task sheet. Page 10-6 is a duplicate of page 8-4. Pages 10-7, 10-8 and 10-13 are handouts, and pages 10-15, 10-17, 10-19, 10-21 to 10-23 set out different scenarios. All of these documents form part of the program handouts for use in the anti-racism training course.

Record 19

This record is the tender opening document and contains the names of the bidders, the per diem unit price and the total unit price for the training course. This record was disclosed to the appellant with the exception of the per diem unit price for the successful bidder.

Ministry's and Successful Bidder's Arguments

The Ministry states that disclosure of the records at issue under section 17 would reveal the program, method, technique or process of the anti-racism training developed by the successful bidder. The Ministry indicates further that the proposal was supplied pursuant to a confidential sealed tender competition. The Ministry submits that disclosure of this information could reasonably be expected to prejudice the competitive position or result in undue loss to the successful bidder (sections 17(1)(a) and (c)). Moreover, the Ministry claims that disclosure would also prejudice its ability to elicit closed tendered bids or proposals in the future (section 17(1)(b)). The Ministry provides no other evidence to support these claims.

The successful bidder states that the proposal was supplied in confidence and it was not expected that it would be made public for any reason. Further, the successful bidder attributes its success, in part, to the quality of the format and content of the proposal, and indicates that its competitive edge is ensured by keeping the proposal confidential. The successful bidder also states that it is primarily concerned about disclosure of pages 3-5 through 3-12 of the proposal.

With respect to the remaining records, the successful bidder indicates that these materials were handed out as part of private and confidential training sessions. The sessions are private so that participants can say what they wish without fear of reprisal.

On the basis of these submissions and a review of the records, I will now turn to a discussion of the three parts of the section 17 test.

Part One

In reviewing the records, I am satisfied that they contain commercial information pertaining to the business of the successful bidder. In addition, page 3-15 and Record 19 contain financial information pertaining to the costs of providing the anti-racism training course. Accordingly, I find that the first part of the test has been met.

Part Two

In order to satisfy part two of the test, the information must have been supplied to the Ministry in confidence, either implicitly or explicitly. Previous orders have indicated that information contained in a record may be said to have been "supplied" to an institution if its disclosure would permit the drawing of accurate inferences with respect to the information that was actually supplied.

It is clear that the proposal (Record 3) and the handouts (pages 8-4, 10-3, 10-6, 10-7, 10-8, 10_13, 10-15, 10-17, 10-19 and 10-21 to 10-23) were supplied to the Ministry by the successful bidder. Further, the information which has been withheld from Record 19 would reveal information which was supplied by the successful bidder. Having found that the information in the records was supplied, I must now determine whether it was supplied in confidence, either implicitly or explicitly.

As I indicated above, both the Ministry and the successful bidder indicate that the proposal and program handouts were supplied in confidence. The successful bidder indicates that it did not expect that the proposal would be made public for any reason.

Further, the successful bidder argues that because of the private and confidential nature of the sessions, the documents used in them are also confidential. Also in this regard, the successful bidder claims that the handouts are complementary to discussions and other course work and taken by themselves have no context.

The RFP (Record 2, which was disclosed to the appellant) establishes the requirements for proposals. Point 8.0 on page 2-11 sets out the manner in which information will be treated. Paragraph 2 of point 8.0 provides:

All information obtained by the Ministry from the suppliers in connection with this RFP will remain with the Ministry and be retained by it **for public record purposes in accordance with Ontario's Freedom of Information and Protection of Privacy Act, 1987**. Any proprietary or confidential information should be identified as such and the desired treatment specified. (Emphasis added)

There is nothing on the face of the proposal or covering letter (Record 3) which indicates that the proposal, in its entirety, or any part of it, was to be treated confidentially. Similarly, there is nothing attached to or included in the program package which contains the handouts (pages 8-4, 10-3, 10-6, 10-7, 10-8, 10-13, 10-15, 10-17, 10-19 and 10-21 to 10-23) which indicates that these documents are to be maintained in confidence. The successful bidder consented to disclosure of many other handouts in the program package, and it is difficult to comprehend why the handouts remaining at issue are different. Further, in my view, handing things out to participants in a course is inconsistent with an intention to keep a document confidential. In my view, the evidence I have before me is insufficient for me to conclude that either the proposal or the course content was supplied explicitly in confidence.

While I accept that the proposal was supplied implicitly in confidence as part of a sealed tender process, I find that this expectation was reasonable only until the moment the envelopes were opened and the successful bidder was announced. Thereafter, confidentiality of the information was not promised, nor am I persuaded that the successful bidder's expectation that the proposal or any course content would be kept confidential was reasonable in the circumstances.

Accordingly, I find that Record 3, and pages 8-4, 10-13, 10-15, 10-17, 10-19, 10-21 to 10-23 were not supplied in confidence. As a result, disclosure of Record 19 would not reveal information which was supplied in confidence. Thus, the second part of the test has not been met.

Part Three

Even if I were to find that the information contained in the records at issue under section 17 was supplied in confidence, I am not persuaded that the harms claimed by the Ministry and the successful bidder could reasonably be expected to occur should this information be disclosed. The successful bidder has provided nothing in support of its statement that it believes that its success was partly due to the quality of the format and content of its proposal, or that disclosure of this information could reasonably be expected to result in the harm claimed. Accordingly, I find that the third part of the test has also not been met.

Since it is necessary to satisfy **all three parts** of the test in order to qualify for exemption under section 17(1), I find that the information at issue is not exempt under this section. As no other exemptions have been claimed for Records 3 and 19, and pages 8-4, 10-3, 10-6, 10-7, 10-8, 10_13, 10-15, 10-17, 10-19, 10-21 to 10-23, and no mandatory exemption applies, these records and parts of records should be disclosed to the appellant.

PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including the following:

...

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) 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 Ministry claims that Records 3, 4, 10, 11, 12, 13, 14, 16 and 17, in whole or in part, contain personal information. I have described these records and parts of records below and have set out my findings regarding each one.

Before I discuss the records in detail, however, it is important to note that much of the information at issue under section 21 pertains to employees of the Ministry who attended the training course, or to other individuals in their professional capacity. Many previous orders have found that information about an employee does not constitute that individual's personal information where the information relates to the individual's employment responsibilities or position.

On this basis, the appellant argues that information about the attendance of, or comments made by, Crown attorneys regarding this course does not qualify as personal information. In the circumstances of this appeal, however, I do not agree. In my view, the general principle regarding employees referred to above recognizes that employees, as individuals, are entitled to rely on the privacy protection sections of the Act, insofar as their activities extend beyond the routine, day-to-day responsibilities of their employment. Therefore, the fact that an employee attends a training course, as well as any notes taken by that person, and his or her comments or views about the course, is recorded information about an identifiable individual, which falls outside of the routine employment responsibilities of that individual, and as such, qualifies as that individual's personal information.

Records 3 and 4

Pages 3-17 to 3-33 contain the resumes of the consultants retained by the successful bidder. Pages 4-17 to 4-21 contain the resumes of the individuals employed by the unsuccessful bidder. I find that these pages contain the personal information of the individuals named in them.

Record 10

Pages 10-1, 10-2, 10-7, 10-10, 10-18 and 10-19 contain handwritten comments made by a participant in the anti-racism training course. I find that these pages contain the personal information of that participant only.

Record 11

This record, which consists of 48 pages, was disclosed to the appellant with the exception of the names of those individuals who took part in the anti-racism training course. I find that the names of the individuals who attended the training course qualifies as personal information.

Record 12

This record, which has been exempted in its entirety, consists of a number of memoranda from individuals who attended the training course. The memoranda contain the views and opinions of these individuals about the course. I find that each page of Record 12 contains the personal information of the authors of the memoranda.

In reviewing the records, I also note that some of the comments contained in the memoranda reflect personally on the associate (of the successful bidder). I find that pages 12-10, 12-11, 12-13, 12-14, 12-19, 12-20 (12-21 and 12-22 are duplicates of 12-19 and 12-20), 12-25, 12-26 and 12-40 contain comments about the associate as an individual, and thus qualify as his personal information.

Record 13

The Ministry has exempted pages 13-15 and 13-16 in their entirety and parts of pages 13-25 and 13-38. I have already found pages 13-15 and 13-16 to be exempt under section 13(1) of the Act. Accordingly, I will restrict my discussion of section 21 to pages 13-25 and 13-38.

The majority of page 13-25 has been disclosed to the appellant. Only the identity of an individual who sent correspondence to the Ministry regarding the anti-racism training course has been withheld under section 21. I find that the name and address of this individual qualifies as personal information.

Part of page 13-38 contains a handwritten note from an employee regarding a personal matter. I find that this portion of the record qualifies as the personal information of the employee. The remaining portion of this record was disclosed to the appellant.

Record 14

This record is a letter from the Assistant Deputy Attorney General to the associate (of the successful bidder) regarding the Ministry's decision to suspend the training program. There is a close connection between the associate and the consulting firm, and in some cases, comments about the program reflect personally on the associate, in which case, I would find that this information qualifies as personal information. In this case, however, the consulting firm was retained to provide the program and the letter suspending the program is directed at the firm rather than the individual. In these circumstances, I find that the information in Record 14 does not qualify as personal information, and this record should be disclosed to the appellant.

Records 16 and 17

These records consist of letters written to the Attorney General by members of the public. The Ministry has disclosed the content of these letters and has withheld only the names of the authors. I find that the names of the authors qualifies as their personal information.

INVASION OF PRIVACY

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. The only exception to the mandatory exemption which may apply in the circumstances of this appeal is section 21(1)(f), which read as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

The effect of section 21(1)(f) is that the section 21(1) exemption will not apply if it is demonstrated that disclosure of the personal information would **not** be an unjustified invasion of another individual's personal privacy.

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.

The Ministry relies on section 21(3)(d) (employment or educational history) to support its decision to withhold information contained in Records 3, 4, 10 and 11 from disclosure. With respect to the remaining records, the Ministry indicates generally that disclosure of the records would constitute an unjustified invasion of personal privacy.

The successful bidder also argues that disclosure of the personal information in Record 3 would constitute an invasion of personal privacy.

The nine affected parties who submitted representations all indicate that the memoranda which they wrote were private and personal communications and there was never any intention that these views would be released to the public. In my view, the affected parties have implicitly raised sections 21(2)(f) (highly sensitive) and (h) (provided in confidence) as relevant considerations which favour non-disclosure.

The appellant refers to section 21(2)(a) (public scrutiny) to support her views that the records should be disclosed. She also alludes to a public interest in disclosure which overrides the exemptions in the Act (section 23). I will address this issue below under a separate heading.

I have reviewed the records, and the representations and correspondence submitted by the parties, and have set out my findings below.

Records 3 and 4

Several past orders of the Commissioner's office have found that resumes contain the employment and/or educational history of an individual. I agree with this approach. Accordingly, I find that the presumed unjustified invasion of personal privacy found in section 21(3)(d) of the Act applies to the resumes in pages 3-17 to 3-33 and 4-17 to 4-21. Since this presumption applies, factors favouring disclosure of the records under section 21(2) cannot be used to rebut the presumption (Order M-170).

None of the information in these records falls within section 21(4) of the Act. Accordingly, disclosure of any of this information would result in an unjustified invasion of personal privacy, and the information is exempt pursuant to section 21 of the Act.

Record 11

The information withheld in Record 11 simply identifies that these individuals have taken a course during the course of their current employment. In my view, this information cannot be considered to be “employment history” of Ministry employees within the meaning of the Act. Therefore, the presumption in section 21(3)(d) does not apply to this information. I will deal with this record further under the subheading “Remaining Records”, below.

Record 12

In the circumstances of this appeal, it is possible to separate the names of the authors of the memoranda in Record 12 from their views and opinions regarding the course. Once this former category of information is removed, nothing remains in the memoranda which would identify the authors. Accordingly, disclosure of the remaining information in this record would not constitute an unjustified invasion of their personal privacy.

The information contained in pages 12-10, 12-11, 12-13, 12-14, 12-19, 12-20 (12-21 and 12-22 are duplicates of 12-19 and 12-20), 12-25, 12-26 and 12-40 pertain to the associate (of the successful bidder) as an individual. The appellant indicates in her representations that the associate is a public figure. I note that this individual has received considerable media coverage pertaining to his activities, much of which is reflected in the views expressed by Ministry staff. Moreover, the contract with the successful bidder was suspended before its completion. The appellant states that cancellation of the Ministry’s contract with the successful bidder, as well as reports of complaints regarding the training sessions, were widely publicized in the media.

I find that there is sufficient evidence that a public interest has been expressed regarding the activities of the Ministry with respect to this anti-racism training course, including the circumstances which led to the creation of the records. Disclosure of the personal information pertaining to the associate is, therefore, desirable for the purpose of subjecting the activities of the Ministry to public scrutiny.

The result is that section 21(2)(a) is a relevant consideration which weighs in favour of releasing pages 12-10, 12-11, 12-13, 12-14, 12-19, 12-20 (12-21 and 12-22 are duplicates of 12-19 and 12-20), 12-25, 12-26 and 12-40.

The Ministry has not raised any specific factors which might weigh in favour of withholding the information in pages 12-10, 12-11, 12-13, 12-14, 12-19, 12-20 (12-21 and 12-22 are duplicates of 12-19 and 12-20), 12-25, 12-26 and 12-40 from disclosure. Nor has the associate addressed this issue in his correspondence. I have considered the presumptions in section 21(3) and find that none of them apply. I have also examined the factors in section 21(2) as well as any other considerations which might be relevant in the circumstances of this appeal, and I find that none of them are relevant.

In view of my findings above, I find that, in the circumstances of this appeal, disclosure of the views and opinions of the authors about the associate would **not** constitute an unjustified invasion of his personal privacy.

To summarize my findings regarding Record 12, I find that, with the exception of information which would identify the authors of the memoranda in Record 12 (which includes their names and their office locations), the remaining information in Record 12 would not constitute an unjustified invasion of personal privacy and is, therefore, not exempt under section 21 of the Act. As no other exemptions apply to this information, it should be disclosed to the appellant.

I have highlighted in yellow on the copy of Record 12 which is being sent to the Ministry's Freedom of Information and Privacy Co-ordinator, the portion of this record which would identify the authors of the memoranda. I will deal with this information further under the subheading "Remaining Records", below.

Record 10

The notes made by a Ministry employee on the handouts in Record 10 do not qualify as employment or educational history within the meaning of section 21(3)(d). However, these notes are of a personal nature, in that they contain the employee's personal views regarding racism and were made in an atmosphere of confidentiality. As such I find that this information has been provided in confidence (section 21(2)(h)) and is highly sensitive within the meaning of section 21(2)(f). Accordingly, I find that the factors in sections 21(2)(f) and (h) are relevant considerations with respect to pages 10-1, 10-2, 10-7, 10-10, 10-18 and 10-19.

The appellant's representations raise concerns about the circumstances surrounding the contract between the successful bidder and the Ministry. In my view, these concerns as expressed are sufficiently broad to encompass the content of the training sessions, which includes notes made by attendees at the sessions (pages 10-1, 10-2, 10-7, 10-10, 10-18 and 10-19). Accordingly, I find that section 21(2)(a) is also a relevant consideration with respect to these pages.

In weighing the interests of the appellant in disclosure of pages 10-1, 10-2, 10-7, 10-10, 10-18 and 10-19 against the factors favouring privacy protection, I find that the factors favouring non_disclosure are more compelling. Accordingly, I find that disclosure of the portions of these pages which are at issue in this discussion would constitute an unjustified invasion of personal privacy and they are properly exempt under section 21(1) of the Act.

Remaining Records

In view of the disclosure which I have already ordered, I am not persuaded that disclosure of the identities of the employees who attended the course, or those who authored memoranda or other notes, or members of the public who sent correspondence to the Ministry, is desirable for the purpose of subjecting the activities of the Government to public scrutiny. Accordingly, I find that the consideration in section 21(2)(a) is not relevant to this information. This information is found in Records 11, 12, 13-25, 16 and 17.

Further, I find that the information at issue in page 13-38 pertains to a personal matter concerning an employee which is unrelated to the subject matter of the request, and section 21(2)(a) is not relevant to this information.

In the absence of any relevant considerations favouring disclosure, I find that disclosure of the remaining information identified above would constitute an unjustified invasion of personal privacy, and this information is properly exempt under section 21(1) of the Act.

In summary, I have found that the following records or parts of records are exempt under section 21(1) of the Act:

- Record 3: pages 3-17 to 3-33 (in their entirety)
- Record 4: pages 4-17 to 4-21 (in their entirety)
- Record 10: pages 10-1, 10-2, 10-7, 10-10, 10-18 and 10-19 (the portions which have been highlighted by the Ministry)
- Record 11 (the portions which have been highlighted by the Ministry)
- Record 12 (the portions which I have highlighted in yellow, on the copies of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator)
- Record 13: pages 13-25 and 13-38 (the portions which have been highlighted by the Ministry)
- Record 16 (the portions which have been highlighted by the Ministry)
- Record 17 (the portions which have been highlighted by the Ministry).

I have found that the following records or parts of records are **not** exempt under section 21(1) and should be disclosed to the appellant:

- Record 12 (the portions which have **not** been highlighted)
- Record 14.

PUBLIC INTEREST IN DISCLOSURE

I have found that a number of records are exempt from disclosure under sections 13(1) and 21(1) of the Act. As I indicated above, the appellant has alluded to the application of the public interest override to all of the records at issue.

Section 23 of the Act provides:

An exemption from disclosure of a record under sections **13, 15, 17, 18, 20 and 21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (Emphasis added)

It has been stated in a number of previous orders that, in order to satisfy the requirements of this section, there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption. I have been provided with no submissions by any of the parties specifically on this issue.

In the circumstances of this appeal, I am not convinced that there is a compelling public interest sufficient to outweigh the purpose of the exemptions under sections 13 and 21. Accordingly, I find that section 23 of the Act does not apply in the circumstances of this appeal.

ORDER:

1. I uphold the Ministry's decision to withhold the following records or parts of records from disclosure: 3-17 to 3-33, 4-17 to 4-21, 10-1, 10-2, 10-7, 10-10, 10-18, 10-19, 11, 13_4, 13-12 to 13-16, 13-21 to 13-24, 13-25, 13-38, 13-44, 15-3 to 15-9, 16, 17 and 18, and the portions of Records 12, 13-3 and 13-42 to 13-43 which I have highlighted in yellow on the copies of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Ministry to disclose the remaining records and parts of records to the appellant by sending her copies of these records not later than **March 20, 1996** and not earlier than **March 15, 1996**.
3. In order to verify compliance with the terms 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 2.

Original signed by: _____
Laurel Cropley
Inquiry Officer

February 14, 1996

APPENDIX

INDEX OF RECORDS AT ISSUE

RECORD NUMBER(S)	PAGES AT ISSUE	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED
1	1-1 to 1-9	Draft request for proposal	13(1)
3	3-1 to 3-34	Proposal	17, 21
4	4-17 to 4-21	Proposal	21
8	8-4	Memo with attachments	17
10	10-1, 10-2, 10-7, 10-10, 10-18, 10-19	Course handouts (used copy, contains handwritten comments)	21
10	10-3, 10-6, 10-7, 10-8, 10-10, 10-13, 10-15, 10_17, 10-19 and 10-21 to 10-23	Course handouts (used copy, contains handwritten comments)	17
11	11-12, 11-14a, 11-19, 11-20, 11-29, 11-31, 11_32, 11-35, 11-36, 11_37, 11-39, 11-40, 11_44 to 11-48	Memo re: scheduling of sessions	21
12	12-1 to 12-45	Letters and memos	13(1) , 21
13	13-1 to 13-24, 13-25, 13_38	Memos	13(1), 19, 21
14	14-1 to 14-2	Letter	21
15	15-3 to 15-9	Memos and notes	13(1), 19
16	16-3, 16-3, 16-6, 16-8	Letters	21
17	17-1	Letter	21
18	18-1 to 18-10, 18-13 to 18-37	Briefing notes	13(1), 19
19	19-1	Tender opening sheet	17