



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1163

Appeal P-9500688

Ministry of Health



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NATURE OF THE APPEAL:

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a copy of an investigation report made of several workplace discrimination complaints filed by the appellant.

The Ministry granted access to the majority of the report and denied access to the remaining information under the following mandatory exemption contained in the Act:

- invasion of privacy - section 21(1)

The appellant appealed the decision to deny access. During the mediation stage of the appeal, the appellant agreed to reduce the scope of her appeal to include only the undisclosed information contained in paragraphs 34, 35 and 36 of the report.

A Notice of Inquiry was provided to the Ministry, the appellant and two individuals whose interests may be affected by the outcome of this appeal (the affected persons). As the information at issue appeared to contain the personal information of the appellant as well as other individuals, the parties were invited to make submissions on the possible application of section 49(b) of the Act, in addition to section 21(1). Representations were received from the Ministry and the affected persons.

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.

I have reviewed the information contained in paragraphs 34, 35 and 36 of the record and find that it contains the personal information of the appellant and one of the affected persons only. In the record, the affected persons are referred to by way of a designated letter (A and X). I find that the appellant is sufficiently familiar with the events surrounding the investigation that it is reasonable to assume that Affected Person A may be identifiable to her, without the actual name being present.

The Ministry claims that it is also reasonable to assume that Affected Person X would be identifiable to the appellant. However, beyond making this statement, neither the Ministry nor Affected Person X have provided me with any evidence to demonstrate why this might be so. Accordingly, I find that Affected Person X is not an identifiable individual within the meaning of section 2(1) and the information contained in the record which relates to this individual is not personal information as defined by the Act.

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 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 appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to her own personal information, the only situation under section 49(b) in which she can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

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 which are relevant in the circumstances of the case.

The Ministry submits that the reputation of Affected Person X would be unfairly damaged by the disclosure of the record (section 21(2)(i)). However, this submission refers to information which I have determined is not personal information. The Ministry also submits that the personal information found in all three paragraphs is highly sensitive (section 21(2)(f)) and that the information in paragraphs 34 and 36 was provided to the Ministry in confidence (section 21(2)(h)). In addition, the Ministry argues that the appellant received an adequate degree of disclosure in the summary of investigation findings which was provided to her. These are all considerations favouring the non-disclosure of the personal information contained in these paragraphs.

Affected Person A submits that he/she would be exposed unfairly to harm should the record be disclosed (section 21(2)(e)) and that the information is highly sensitive and was supplied in confidence.

The appellant did not provide any representations.

Having reviewed the representations and the records, I have made the following findings:

- (1) I have not been provided with sufficient evidence to demonstrate that the disclosure of the information relating to Affected Person A would expose this individual **unfairly** to pecuniary or other harm.
- (2) I agree that a portion of the undisclosed information contained in the record may be considered highly sensitive (section 21(2)(f)). It is my view that this information pertains primarily to Affected Person A and only peripherally to Affected Person X.

- (3) Section 21(2)(h) is a relevant consideration with regard to the personal information of Affected Person A. I am satisfied that Affected Person A had an expectation of confidentiality when he/she provided this information to the investigator and that it was reasonably held.
- (4) The appellant has been granted access to the information contained in the report which directly addresses her complaints. This is a factor weighing in favour of the non-disclosure of the remaining information, none of which bears directly on the subject of her complaints.

Having considered all of the factors present in this appeal and balancing the appellant's right of access to her own personal information against the privacy interests of Affected Person A, I find that the disclosure of paragraphs 34, 35 and 36 of the record would constitute an unjustified invasion of the personal privacy of Affected Person A. Accordingly, section 49(b) applies to exempt the personal information of Affected Person A from disclosure.

I have found that paragraphs 34, 35 and 36 of the record do not contain the personal information of Affected Person X and no other exemptions were claimed to apply to this portion of the record. I find, however, that the personal information of Affected Person A is so intermingled with the information of the unidentifiable affected person that it is not possible to sever the record in a meaningful way so as to protect from disclosure the information which I have found to be exempt. I find, therefore, that paragraphs 34, 35 and 36, in their entirety, should not be disclosed to the appellant.

ORDER:

I uphold the Ministry's decision to deny access to paragraphs 34, 35 and 36 of the record.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ April 11, 1996