



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1164

Appeal P-9500638

Ministry of the Solicitor General and Correctional Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all written reports in personnel or institutional files which mentioned the name of the requester in anything other than positive ways. The request went on to describe specific records thought by the requester to fit within this general description.

The Ministry identified five responsive records, consisting of four occurrence reports and two pages from a log book. The Ministry provided partial access to the log book pages, and denied access to the remaining portions of these pages and to the four occurrence reports in their entirety on the basis of section 49(b) of the Act (invasion of privacy).

The requester (now the appellant) appealed the Ministry's decision.

During the course of mediation, the appellant agreed to withdraw the part of her request relating to the remaining portions of the log book, and this record is no longer at issue in this appeal.

The four occurrence reports can be described as follows:

- Report #1: a one-page report dated July 8, 1995 from an employee to the Superintendent concerning an incident involving the appellant.
- Report #2: a three-page report dated July 8, 1995 from another employee to the Superintendent concerning the same incident involving the appellant.
- Report #3: a two-page report dated July 8, 1995 from a third employee to the Superintendent concerning a different incident involving the appellant and other employees.
- Report #4: a one-page report dated May 7, 1995 from a Manager to the Superintendent reflecting a settlement reached by the appellant and another employee to resolve employment-related conflicts.

Further mediation was not successful, and a Notice of Inquiry was sent to the appellant, the Ministry and the authors of the four reports (the affected persons). Representations were received from the appellant and three of the affected persons.

DISCUSSION:

INVASION OF PRIVACY

The sole issue in this appeal is whether disclosure of the four occurrence reports would represent an unjustified invasion of the personal privacy of individuals other than the appellant.

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.

Having reviewed these reports, I find that they all contain the personal information of the appellant. Because they were made in the context of employment disputes involving the appellant and a fellow employee, I also find that these reports contain the personal information of this other employee (the author of Report #2), the authors of Reports #1 and #3, and other individuals referred to in Reports #2 and #3. The author of Report #4, a Ministry Manager, was acting in his professional capacity in documenting the settlement reflected in the report, and I find that this report contains the personal information of the appellant and her fellow employee, but not the Manager.

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 a requester 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. In this situation, a requester is not required to provide that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since a requester has a right of access to his/her own personal information, the only situation under section 49(b) in which he/she can be denied access to the information is if it can be demonstrated that 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 the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies, 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), as well as all other considerations that are relevant in the circumstances of the case.

As noted earlier, the Ministry did not submit representations in response to the Notice of Inquiry. However, in its decision letter to the appellant, it raised sections 21(2)(e), (f) and (h) as relevant considerations relied on in claiming the section 49(b) exemption. The appellant raises sections 21(d) and (g) in support of her position that the reports should be released. The affected persons who provided representations raise the types of considerations identified in sections 21(2)(e), (f) and (h) of the Act.

These sections of the Act deal with the following circumstances:

- relevant to fair determination of rights - section 21(2)(d)
- unfair exposure to pecuniary or other harm - section 21(2)(e)
- highly sensitive - section 21(2)(f)

- information unlikely to be accurate or reliable - section 21(2)(g)
- information provided in confidence - section 21(2)(h)

In the absence of representations from the Ministry, I have pieced together what I understand to be the context in which the four reports were created, based on the contents of the reports themselves and the representations provided by the other parties. The reports all relate to ongoing job-related conflict between the appellant and a fellow worker. Report #2 was authored by this co-worker and contains her version of an incident involving the appellant. Report #1 represents another employee's version of the same incident, and Report #3 is a third co-worker's version of a separate incident, also involving the appellant. All three of these reports were filed on the same date to the Superintendent at their common workplace. The appellant is aware of the identity of the authors of these reports.

In response to these complaints, a meeting was held with the appellant and her union representative, at which point it appears that management determined not to act in response to the complaints made against the appellant. The appellant's representations indicate that the general content of the reports was discussed at this meeting, although the specific allegations and the reports themselves were not disclosed. The appellant apparently was not satisfied with this resolution, and subsequently filed a formal grievance. There is no evidence before me as to the current status of this grievance.

Having reviewed the contents of the reports and the representations provided by the various parties, I make the following findings:

1. None of the parties have identified any of the presumptions contained in section 21(3) as being applicable in the circumstances of this appeal. I agree.
2. Reports #1, #2 and #3 contain information which was likely to have been supplied by the authors in confidence, and I find that section 21(2)(h) is a relevant circumstance with respect to these records. This circumstance favours non-disclosure.
3. Based on the evidence provided by the appellant and the various affected persons, I am not persuaded that disclosure of the contents of any of the reports would unfairly expose the authors of Records #1, #2 and #3 to pecuniary or other harm, nor that the personal information is unlikely to be accurate or reliable. I find that sections 21(2)(e) and (g) are not relevant circumstances in the context of this appeal.
4. The contents of Records #1, #2 and #3 relate to specific incidents which took place in the workplace and, with the exception of certain references contained in Reports #2 and #3 which do not deal directly with the main subject matter of these reports and are discussed below, I find that they are not properly characterized as being highly sensitive. Therefore, section 21(2)(f) is not a relevant circumstance with respect to these portions of Reports #1, #2 and #3.
5. The contents of Reports #1, #2 and #3 concern complaints made by fellow employees against the appellant, which were considered by management as significant enough to

warrant a meeting with the appellant and her union representative, and are the subject of an ongoing grievance filed by the appellant. I find that section 21(2)(d) is a relevant circumstance with respect to these reports, which favours disclosure.

6. Report #4 reflects a settlement between the appellant and one of the affected persons, the details of which are known to both individuals. According to the appellant, she has been allowed to read this report, but was refused a copy. I find that no factors favouring non-disclosure of the information contained in this report are present in the circumstances of this appeal.
7. As far as Records #1, #2 and #3 are concerned, in weighing the circumstance in section 21(2)(h) which favours non-disclosure against the circumstance in section 21(2)(d) favouring disclosure, I find that the circumstance favouring disclosure is more compelling in the context of this appeal. This finding does not apply to those portions of Records #2 and #3 which contain information which does not deal directly with the subject matter of these reports; section 21(2)(d) is not a relevant circumstance with respect to these portions, and I find that the circumstances favouring non-disclosure are more compelling.

Therefore, I find that, subject to those portions of Reports #2 and #3 which contain personal information of individuals other than the appellant and the affected persons which do not deal directly with the subject matter of these reports, disclosure of all four reports would not constitute an unjustified invasion of the personal privacy of any individuals, and do not qualify for exemption under section 49(b) of the Act. I have attached a copy of Reports #2 and #3 with the copy of my order sent to the Ministry's Freedom of Information and Privacy Co-ordinator which highlights those portions of the Reports which should **not** be disclosed.

ORDER:

1. I order the Ministry to disclose Reports #1 and #4 in their entirety, and the portions of Reports #2 and #3 which are **not** highlighted on the copy of those reports being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order by **May 17, 1996** but not earlier than **May 13, 1996**.
2. In order to verify compliance with the provisions of this order, I reserve the right to require that the Ministry provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____ April 12, 1996
Tom Mitchinson
Assistant Commissioner