



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1130

Appeals P-9500563, P-9500564 and P-9500589

Ministry of Transportation



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Transportation (the Ministry) received three requests under the Freedom of Information and Protection of Privacy Act (the Act) for information relating to job competitions MT-BU/94-242 (Appeal P-9500563), MT-BU/94-241 (Appeal P-9500564) and MT/M/94-44 and MT/M/94-47 (Appeal P-9500589). The requester was an unsuccessful candidate in these competitions. In each case, the Ministry granted partial access to records identified as responsive to the request and denied access to the remainder based on the following exemption contained in the Act:

- invasion of privacy - section 21(1)

The requester appealed the Ministry's decision. A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

In her representations, the appellant clarified the scope of the requests to include only:

1. the answers as documented by the interview panel;
2. the score for each answer by each member of the interview panel; and
3. the scores for the reference sheets and the total score for each candidate.

The appellant further stated that she is only interested in the information as it relates to the other candidates. Finally, she stated that the other candidates' names and identifiers can be removed from the scope of the appeal.

The following records remain at issue, based on the appellant's clarified request:

Appeal P-9500563:

- Three pages entitled, "COMPETITION - APPLICANT LISTING AND SCREENING", dated January 25, 1995, January 31, 1995 and February 2, 1995. Only the information relating to other individuals under the headings, "MUSTS", "SHOULD'S", "Screening Rating" and "To be Interviewed" in each page remains at issue.
- Three pages entitled, "REFERENCE CHECK". All three pages relate to an individual other than the appellant.
- Two groups of interview questions and answers. Each group consists of three sets of questions and answers relating to an individual other than the appellant.

Appeal P-9500564:

- A one-page memorandum, dated February 1, 1995, entitled, "RE: INTERVIEW SCHEDULE FOR APPLICANTS". Only the percentage figure relating to each of the two other candidates remains at issue.

- Three pages entitled, "COMPETITION - APPLICANT LISTING AND SCREENING", dated January 18, 1995, January 19, 1995 and January 23, 1995. Only the information relating to other individuals under the headings, "MUSTS", "SHOULD", "Screening Rating" and "To be Interviewed" in each page remains at issue.
- Three pages entitled, "REFERENCE CHECK". All three pages relate to an individual other than the appellant.
- Two groups of interview questions and answers. Each group consists of three sets of questions and answers relating to an individual other than the appellant.

Appeal P-9500589:

- Eight groups of interview questions and answers. Each group consists of three sets of questions and answers relating to an individual other than the appellant.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an **identifiable** individual.

I have reviewed the information remaining at issue, keeping in mind the appellant's exclusion of the other candidates' names and identifiers from the scope of the request. With this information removed, I find that the information remaining at issue in the pages entitled, "COMPETITION - APPLICANT LISTING AND SCREENING" in Appeals P-9500563 and P-9500564 is not information about an **identifiable** individual, and does not qualify as personal information.

The exception to the above is the information under the heading, "To Be Interviewed" found in the January 23, 1995 "COMPETITION - APPLICANT LISTING AND SCREENING" in Appeal P-9500564. I will address this portion of the records later in this order.

In Appeal P-9500589, it is my view that, when the candidate's name, and the time and date of the interview are removed, some of the answers do not relate to an identifiable individual because of the general nature of the answers. I find, therefore, that the following information does not constitute personal information:

- the answers to questions two and three on page one;
- the answer to question one on page two; and
- the answer to question three on page three.

As section 21 of the Act can only apply to personal information, I find that the information described above cannot be exempt under section 21. As no other exemption applies to this information, it should be disclosed to the appellant. I have highlighted on a copy of a sample record which I have provided to the Ministry's Freedom of Information and Privacy Co-ordinator

those portions of the records at issue in Appeal Number P-9500589 which are not exempt under section 21 and should be disclosed. Similar information contained in the other records at issue in this appeal should also be disclosed.

With respect to the remaining information at issue, I find that it contains only the personal information of individuals other than the appellant. In Appeals P-9500563 and P-9500564, the REFERENCE CHECK relates only to the successful candidate and the interview questions and answers relate to the successful candidate and one other individual.

In Appeal P-9500564, the information under the column entitled, "To Be Interviewed" in the January 23, 1995 document entitled, "COMPETITION - APPLICANT LISTING AND SCREENING" relates to the successful candidate and the same other individual.

Finally, in Appeal P-9500564, the two scores severed from the memorandum dated February 1, 1995, relate to the successful candidate and again, the same other individual. I am of the view that, in light of the small number of candidates in the competition, even with the names and identifiers removed, these portions of the records can be related to identifiable individuals. I find, therefore, that they constitute the personal information of these individuals.

In Appeal P-9500589, the answers to questions one on page one, questions two, three, and four on page two, and questions one and two on page three all relate to the candidates' own personal circumstances. As such, the candidates may be identified through their answers to these questions and I find that this information constitutes their personal information.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 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 circumstances that are relevant in the circumstances of the case.

The Ministry submits that the appellant has been granted access to all of the personal information which relates to her, that the information which she seeks is personal information and that section 21 applies to that information.

The appellant states that the other candidates' answers to the interview questions and their scores are not personal information, and she provides an analogy to the public broadcasting of athletes' performances and scores. She further states that the requested information "is relevant to a fair

determination of my rights directly affecting me and my future” (section 21(2)(d) of the Act) but does not provide any details as to the nature of those rights or how the disclosure of the records might be relevant to them. Finally, the appellant submits that there is a compelling public interest in the disclosure of the information at issue (section 23 of the Act) in that there is a need to determine whether there has been a violation of the Human Rights Code with respect to employment opportunities. She provides no further details on this issue.

The appellant has not, in my view, provided sufficient evidence to persuade me that any of the considerations listed in section 21(2) which favour the disclosure of the remaining personal information contained in the records apply to the records at issue. I find, therefore, that the disclosure of this information would result in an unjustified invasion of the personal privacy of the individuals to whom the information relates.

Similarly, I have not been provided with any evidence of a **compelling** and **public** interest in the disclosure of the information at issue, as is required by section 23. Finally, the appellant has not suggested that sections 21(4) applies to the information at issue. After a review of the records at issue, I conclude that section 21(4) has no application in the circumstances of this appeal.

As I have found that the disclosure of the remaining personal information at issue in this appeal would constitute an unjustified invasion of personal privacy, the exemption in section 21(1) applies to it.

ORDER:

1. I order the Ministry to disclose to the appellant the information which I have highlighted on the copy of the records provided to the Ministry's Freedom of Information and Privacy Co-ordinator with this order by forwarding a copy to her by **March 26, 1996** but not earlier than **March 21, 1996**. The highlighted copy of the record to be disclosed in Appeal Number P-9500589 applies to each record, which are to be severed in a similar fashion.
2. I uphold the decision of the Ministry to deny access to the remainder of the records at issue and those portions of the records in Appeal Number P-9500589 which are **not** highlighted on the representative copy which I have forwarded to the Ministry's Freedom of Information and Privacy Co-ordinator.
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 disclosed to the appellant pursuant to Provision 1.

Original signed by: _____ February 20, 1996
Donald Hale
Inquiry Officer