



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

ORDER P-1310

Appeal P_9600307

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a copy of a certain transcript of cross-examination of a named individual.

The Ministry located the record responsive to the request and determined that the interests of the named individual (the affected person) could be affected by disclosure of the record. The Ministry notified the affected person pursuant to section 28 of the Act, and requested comments on disclosure of the record. The affected person objected to the disclosure, and, accordingly, the Ministry denied access to the record on the basis of the section 21 exemption (invasion of privacy).

The requester (now the appellant) appealed the denial of access.

Within the 35-day period provided in the Confirmation of Appeal letter for raising additional discretionary exemptions, the Ministry issued a supplementary decision letter. In this letter, the Ministry indicated that it was also relying on sections 19 (solicitor-client privilege) and 49(b) of the Act to withhold access to the record. During the mediation stage of the appeal, however, the Ministry withdrew its reliance on section 49(b) of the Act.

This office sent a Notice of Inquiry to the appellant, the Ministry and the affected person. Representations were received from the Ministry and the affected person only.

PERSONAL INFORMATION

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 record at issue in this appeal and find that it contains the personal information of the affected person, as well as other individuals mentioned in the record. The record does not contain any personal information which relates to the appellant. I find that the information contained in this record falls within the definition of personal information found in section 2(1) of the Act.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in certain circumstances listed under the section. In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f), which states:

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.

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal 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.

As I indicated previously, the appellant did not make representations in response to the Notice of Inquiry. Having found that the record at issue contains the personal information of individuals other than the appellant, and in the absence of any representations weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 21(1)(f) does not apply. Accordingly, I find that the record at issue is properly exempt from disclosure under section 21 of the Act.

PUBLIC INTEREST IN DISCLOSURE

In his letter of appeal, the appellant alluded to the possible application of section 23 of the Act. However, he did not provide any details in this regard.

Section 23 of the Act states as follows:

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)

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called public interest override: there must be a compelling **public** interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

In its representations, the Ministry argues that there is no compelling public interest in the disclosure of the record at issue. As mentioned previously, the appellant did not submit any representations.

I have carefully reviewed all the representations, as well as the record at issue in this appeal. In the circumstances of this appeal, I am not convinced that there is a compelling public interest sufficient to outweigh the purpose of the exemption under section 21. Accordingly, I find that section 23 of the Act does not apply in the circumstances of this appeal.

Because of the manner in which I have disposed of this issue, it is not necessary for me to address the application of section 19 of the Act to the record.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____ November 29, 1996
Mumtaz Jiwan
Inquiry Officer