



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1510

Appeal P-9700242

Ministry of Labour



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 appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Labour (the Ministry). The request was for access to all the records relating to the appellant that were retained by the Ministry's Office of the Worker Adviser (OWA). Specifically, the appellant asked for his entire file including memoranda, correspondence and contents of his OWA Administrative File.

The Ministry located responsive records and granted access to them with the exception of three records. The Ministry withheld the three records based on the following exemptions:

- advice or recommendations - section 13(1)
- law enforcement - section 14(1)(e)
- danger to safety or health - section 20
- invasion of privacy - section 21(1)

The appellant appealed the Ministry's decision to deny access, and claimed that additional records should exist.

This office sent a Notice of Inquiry to the Ministry and the appellant. Sections 49(a) and (b) of the Act were included as issues in the Notice as the three records at issue in the appeal appeared to contain the personal information of the appellant. Representations were received from both parties.

RECORDS:

The records at issue in this appeal consist of three memoranda, totalling four pages.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that such records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

I have considered the representations provided to me by the Ministry and the appellant. I am satisfied that the Ministry's search for responsive records was reasonable in the circumstances.

PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I find that the records relate to the appellant and, therefore, contain his personal information.

The Ministry submits that part of Record 1 contains the personal information of an individual other than the appellant. I have reviewed this part of the record carefully, and considered the representations provided by the Ministry in this regard. However, I find that the information contained in Record 1 is not information **about** this other individual, and it does not qualify as this individual’s personal information. As the records do not contain the personal information of any individual other than the appellant, sections 21 and 49(b) cannot apply.

Under section 49(a) of the Act, the Ministry has the discretion to deny access to an individual’s own personal information in instances where certain exemptions would otherwise apply to that information. Section 49(a) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, **13, 14**, 15, 16, 17, 18, 19, **20** or 22 would apply to the disclosure of that personal information; [emphasis added]

The Ministry has exercised its discretion to refuse access to the records at issue under sections 13, 14(1)(e) and 20. In order to determine whether the exemption provided by section 49(a) applies to the information in these records, I will first consider whether the exemptions in sections 13, 14(1)(e) and 20 apply.

ADVICE OR RECOMMENDATIONS

The Ministry submits that Record 2, a two-page memorandum dated September 16, 1994, is exempt under section 13(1) of the Act.

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 (Order 118).

While the information could qualify as a suggested course of action, in my view, it is too far removed from the deliberative process of governmental decision and policy making to bring it within the scope of section 13(1). Accordingly, I find that this record does not qualify for exemption under this section of the Act.

LAW ENFORCEMENT/DANGER TO SAFETY OR HEALTH

The Ministry submits that Records 1, 2 and 3 are exempt under sections 14(1)(e) and 20 of the Act.

Sections 14(1)(e) and 20, respectively, provide the Ministry with the discretion to refuse to disclose a record that could reasonably be expected to “endanger the life or physical safety of a law enforcement official or any other person” or to “seriously threaten the safety or health of an individual.”

In support of its view that sections 14(1)(e) and 20 apply to the records, the Ministry has referred to other documents (which are not at issue in this appeal) and has provided an affidavit to support its contention that the disclosure of any of the records would endanger the life or physical safety or seriously threaten the health or safety of the individuals whose names appear in the records.

Without discounting the real and valid concerns many public officials may have concerning their personal safety which may result from their employment, both sections 14(1)(e) and 20 of the Act require me to objectively assess the connection between the disclosure of the records at issue and the endangerment or threat that is contemplated. The Act requires me to determine if the **disclosure** of the record could **reasonably be expected** to endanger the life or safety of a person in the case of section 14(1)(e) or in the case of section 20 to seriously threaten the health or safety of the individual.

Having considered the Ministry’s representations and the other circumstances of this appeal, including the nature of these particular records, I am not convinced that there is a reasonable expectation of probable harm to the individuals whom the Ministry has identified as being at risk. Accordingly, I find that the records do not qualify for exemption under sections 14(1)(e) or 20.

Because I have found that sections 13, 14(1)(e) and 20 do not apply to any of the records at issue, I do not need to consider the application of section 49(a).

ORDER:

1. I order the Ministry to disclose the records remaining at issue to the appellant by sending him a copy by **January 26, 1998**.
2. In order to verify compliance with 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 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

January 5, 1998