



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

ORDER P-1519

Appeal P-9700263

Ministry of Labour



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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 records relating to a specified property and a named business.

The Ministry granted access to a number of records but denied access to a five-page letter, two fax cover sheets, a handwritten note and a Ministry of Labour Premise/Project Form under the following section of the Act:

- invasion of privacy - section 21(1)

The appellant appealed the Ministry's decision to deny access to these records. A Notice of Inquiry was sent to the Ministry, the appellant and one other individual (the affected person). Representations were received from all three parties.

In his representations, the affected person consented to the disclosure of the two fax cover sheets. The Ministry was advised of this, and indicates that these two records will now be disclosed. Accordingly, these records are no longer at issue in this appeal.

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 the records remaining at issue and I find that all three records contain information pertaining to the affected person. Accordingly, I find that this information qualifies as his personal information. None of the information in the records pertains to the appellant.

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). In order for this section to apply, 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 result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information contained 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 it.

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 which are relevant in the circumstances of the case.

The Ministry submits that the information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the

Occupational Health and Safety Act (the OHSA). The Ministry submits that disclosure of these records would, therefore, constitute a presumed unjustified invasion of privacy under section 21(3)(b) of the Act. The Ministry relies on previous orders of this office concerning its mandate under the OHSA (Orders P-1011, P-1119 and P-1301). These orders have found that such investigations satisfy the definition of law enforcement in section 2(1) of the Act.

I agree with the findings made in these previous orders. In my view, this reasoning is equally applicable to a finding that the records at issue in this appeal were compiled and are identifiable as part of an investigation into a possible violation of law, that is the OHSA. Accordingly, I find that disclosure of the records would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b).

As I previously indicated, a presumption in section 21(3) may only be overcome by the application of section 21(4) or section 23 of the Act. The information does not fall within the types of information listed in section 21(4). Therefore, I find that the records are properly exempt under section 21(1).

The appellant indicates that she would like to invoke section 23 of the Act, as she believes that the information she was denied access to is of public interest because it is a health and safety issue.

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.

I have considered the appellant's representations in this regard. In my view, there is no public (as opposed to private) interest in disclosure of any information in the record. Accordingly, section 23 has no application in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

January 22, 1998