



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1523**

**Appeal P-9700251**

**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 appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General and Correctional Services (the Ministry). The request was for access to all correspondence addressed to the Ministry's Community Initiatives Unit regarding complaints or concerns about a named organization and its members. The appellant identified herself as a representative of the organization.

The Ministry located 38 pages of responsive records and denied access to them based on the following exemptions:

- third party information - section 17(1)
- solicitor-client privilege - section 19, and
- invasion of privacy - section 21(1)

The appellant appealed the Ministry's decision to deny access.

During mediation, the appellant agreed not to continue with the appeal with respect to those records for which the Ministry has claimed section 19. Therefore, Records 14-17, 19-27 and 36-38 are no longer at issue and will not be considered in the appeal.

Also, the appellant indicated she was no longer pursuing access to the personal identifiers of other individuals such as names, addresses and signatures contained in the responsive records. However, the appellant has asked for a determination of whether disclosure of the records, with the personal identifiers removed, would qualify as personal information that is deemed to be an unjustified invasion of the personal privacy of these individuals.

A Notice of Inquiry was sent to the appellant, the Ministry and individuals or organizations (the affected parties) who might have an interest in some of the records at issue in the appeal. Representations were received from the Ministry, the appellant and nine of the affected parties.

## **RECORDS:**

There are 22 pages of correspondence remaining at issue, which the Ministry has denied access to under sections 17(1) and 21(1) of the Act. The pages of records and the exemptions being claimed are as follows:

Records: pages 1-5, 8-13, 18, 33 and 34

Exemptions: sections 17(1) and 21(1)

Records: pages 6, 7, 28-32, and 35

Exemption: section 17(1)

## **PRELIMINARY MATTER:**

One of the affected parties argues in its representations that the records are exempt under section 14 of the Act, which is a discretionary exemption dealing with records related to law enforcement.

This claim raises the issue of whether an affected party may raise a discretionary exemption when it was not claimed by the institution which received the request for access to information.

The Act includes a number of discretionary exemptions within sections 13 to 22 which provide the head of an institution with the discretion to refuse to disclose a record to which one of these exemptions would apply. These exemptions are designed to protect various interests of the institution in question. If the head feels that, despite the application of an exemption, a record should be disclosed, he or she may do so. In these circumstances, it would only be in the most unusual of situations that the matter would come to the attention of the Commissioner's office since the record would have been released.

The Act also recognizes that government institutions may have custody of information, the disclosure of which would affect other interests. Such information may be personal information or third party information. The mandatory exemptions in sections 21 and 17 of the Act respectively are designed to protect these other interests. Because the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme, the Commissioner's office, either of its own accord, or at the request of a party to an appeal, will raise and consider the issue of the application of these mandatory exemptions. This is to ensure that the interests of individuals and third parties are considered in the context of a request for government information.

Because the purpose of the discretionary exemptions is to protect institutional interests, it would only be in the most unusual of cases that an affected person could raise the application of an exemption which has not been claimed by the head of an institution. Depending on the type of information at issue, the interests of such an affected person would usually only be considered in the context of the mandatory exemptions in sections 17 or 21 of the Act.

In this case, the Ministry has claimed the application of both mandatory exemptions provided by sections 17 and 21 of the Act.

In my view, the interests of all the affected parties have been taken into account in making this decision and they will, of course, also be considered in the ultimate disposition in this order. In these circumstances, I find that it is not necessary for me to consider the application of the discretionary exemption sought to be applied by the affected party.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 17(1)(a), (b) or (c), the Ministry and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the Ministry in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 17(1) will occur.

[Order 36]

The Ministry submits that the requested information consists of financial and labour relations information about the agency which the appellant represents. I disagree. In my view, there is no information in any of the records which I would characterize as financial or labour relations information. Neither would the information qualify as a trade secret or scientific, technical or commercial information. Accordingly, I find that the first part of the test has not been met.

Additionally, it is the view of the Ministry that "... disclosure of this information would prejudice the competitive position of [the appellant's agency] with respect to the provision of services to women and would result in undue loss, to [the appellant's ] agency." With respect, I cannot fathom a situation in which disclosure to the agency itself could possibly result in harm to its own competitive position.

## **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. The appellant submits that she is not seeking access to personal identifiers such as names, addresses and signatures.

One of the affected parties submits that letterhead, fax identification lines and in some cases entire sentences, paragraphs or records consist of personal identifiers and should not be disclosed to the appellant on this basis. I disagree. It is clear to me that what the appellant has excluded from the scope of her request are names, personal addresses and signatures. I am satisfied that it is appropriate to include position titles within this class of personal identifiers in the circumstances of this case, but no more. The information which I consider to be outside the scope of the appellant's request has been highlighted in yellow on the copy of the records being sent to the Ministry with this order, and should not be disclosed to the appellant.

With regard to the remaining information, one of the affected parties submits that the correspondence was not sent by these individuals in a professional capacity or in the execution of their employment responsibilities. This affected party submits that, notwithstanding that some of the letters are written on the letterhead of the organizations which employ the individuals, the letters were submitted by the individuals on their own behalf, as concerned citizens. The affected party argues that it is not part of the employment responsibilities of any of these individuals to submit such letters, and that each did so for personal reasons.

In my view, a review of the records belies this submission. Each of the “letterhead” records practically states that it was written on behalf of the agency, not the individual. In my view, only three of the letters were written in the personal capacity of the authors, specifically those found on Records 8-13, 18 and 33-34. I find that the remaining records were written in each author’s professional capacity, and do not qualify as personal information. Accordingly, I find that Records 1-7, 28-32 and 35 cannot qualify for exemption under section 21 of the Act. Records 8-13, 18 and 33-34, in my view, contain the personal information of the author of each letter and, in some cases, of other identifiable individuals as well.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 21(1)(f) of the Act reads as follows:

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.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2).

The Ministry and some of the affected parties submit that section 21(3)(d) applies to the records. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

relates to employment or educational history.

Having reviewed Records 8-13, 18 and 33-34, I agree that they each contain information which would fall within this presumption. As a presumption against disclosure cannot be rebutted by either one or a combination of the factors set out in section 21(2) and section 21(4) has no application in the circumstances of this appeal, I find that the information which relates to employment or educational history is exempt from disclosure under section 21 of the Act.

With respect to the information remaining, the appellant submits that she requires the records in order to pro-actively address the concerns expressed therein. While I consider this a relevant consideration, I find that it is not a particularly compelling argument, as I am not convinced that the appellant’s plan to call an inter-agency meeting to address the issues and concerns within the community would be impeded should these portions of the records not be disclosed.

The Ministry and the affected parties also submit that sections 21(2)(e), (f), (h) and (i) are relevant in the circumstances of this appeal. These sections state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The Ministry is of the opinion that the exempted information has been supplied in confidence to the Ontario Government and that disclosure of this confidential correspondence would unfairly damage the reputations of various individuals associated with the organization.

Having balanced the competing rights to privacy and access to information in the particular circumstances of this appeal, I find that the factors favouring privacy protection are more compelling, and disclosure of the parts of Records 8-13, 18 and 33-34 not subject to the section 21(3)(d) presumption would be an unjustified invasion of personal privacy. Accordingly, I find that the exception found in section 21(1)(f) has not been established, and the information is exempt under section 21.

## **ORDER:**

1. I uphold the Ministry's decision not to disclose Records 8-13, 18 and 33-34 to the appellant.
2. I order the Ministry to disclose the remaining records, with the exception of the information highlighted in yellow on the copy of the records being forwarded to the Ministry's Freedom of Information and Privacy Co-ordinator with this order, to the appellant by sending her a copy by **March 5, 1998** but not earlier than **March 2, 1998**.
3. 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 2.

Original signed by: \_\_\_\_\_ January 29, 1998  
Holly Big Canoe  
Inquiry Officer