



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

ORDER P-1548

Appeal P-9800007

Ministry of Citizenship, Culture and Recreation



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NATURE OF THE APPEAL:

The Ministry of Citizenship, Culture and Recreation (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all letters written by a named individual (the affected person) to the Ministry or the Premier's office regarding allegations of impropriety by a named organization. The requester also sought access to a copy of an audit of the named organization and a second audit which may have been conducted in the summer of 1997.

The Ministry transferred part of the request relating to the Premier's office to the Cabinet Office. The Ministry granted access to a major part of the audit. Access was denied to the severed portions of the audit and to two letters in their entirety pursuant to section 21(1) of the Act (invasion of privacy). The Ministry also informed the requester that a second audit was not conducted. The requester appealed the decision.

During mediation, the requester, now the appellant, indicated that he was satisfied that a second audit was not conducted. He indicated further that the transfer of part of the request was not an issue. With respect to the latter, the Ministry advised that the responsive records identified by the Cabinet Office were copies of the two letters, withheld in full by the Ministry and which had been copied to the Premier's office by the author. Accordingly, the transferred portion of the request was returned to the Ministry since it had a greater interest in the records.

The records at issue in this appeal consist of the following:

1. a letter from the affected person to the Ministry with another letter from the affected person to a third person attached to it, withheld in its entirety (Record 1);
2. a letter from the affected person to the Deputy Minister, withheld in its entirety (Record 2);
3. the severed portions (names and other identifiers) of the audit (Record 3).

This office provided a Notice of Inquiry to the appellant, the affected person and the Ministry. Representations were received from all parties.

DISCUSSION:

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 records. Records 1 and 2 are letters from the affected person to the Ministry and a third party and contain the personal opinion or views of an individual and allegations of impropriety against Ministry staff and the named organization. I find that the information in these records relates to the affected person and other identifiable individuals. The audit contains the results of the investigations into the allegations and most of the record has been disclosed to the appellant. I find that the information that has been withheld also relates to the affected

person and other identifiable individuals. None of the withheld information relates to the appellant.

INVASION OF PRIVACY:

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), (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, the only way such a presumption 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.

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 case.

The Ministry states that Records 1 and 2 are letters to the Ministry and the Deputy Minister respectively, and contain allegations of unprofessional conduct on the part of Ministry staff, mismanagement of provincial archeological sites and irregularities surrounding a provincial government grant to a named organization. The Ministry submits that these records contain sensitive information (section 21(2)(f)), are implicitly of a confidential nature (section 21(2)(h)), and that disclosure may unfairly damage the reputation of any person referred to in the records (section 21(2)(i)). The Ministry submits also that the information in the records is unlikely to be accurate or reliable (section 21(2)(g)). The Ministry states that the withheld information in Record 3 (the audit containing the results of the investigation into the allegations) contains names and other identifying information of individuals other than the appellant. The Ministry submits that these factors apply equally to Record 3.

The appellant states that though the affected person's allegations have proven to be unfounded, and have resulted in repercussions to the reputation of the named organization and to the morale of individuals associated with it. The appellant questions the rights to privacy of individuals who persist in making allegations, in the expectation that their communications to institutions will be held in confidence.

The affected person submits that disclosure of the records would constitute an unjustified invasion of his personal privacy.

I have carefully reviewed the records together with the representations of the parties. I note that the results of the Ministry's investigation into the allegations contained in Record 3 have been disclosed, with minor exceptions, to the appellant. Having balanced the competing rights to privacy and access to information, in the particular circumstances of this case, I find that the factors favouring protection of privacy are more compelling and disclosure of the records would

be an unjustified invasion of personal privacy. Accordingly, I find that the exception in section 21(1)(f) has not been established, and the information is exempt under section 21.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ March 27, 1998