



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

ORDER P-1625

Appeal PA_980165_1

Liquor Control Board of Ontario



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NATURE OF THE APPEAL:

The Liquor Control Board of Ontario (the LCBO) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a letter which it received from a named individual in March 1998. The letter was written by the owner of a small, rural liquor agency at the request of the LCBO following complaints by the appellant that he had been refused service at that outlet. The LCBO located the requested record and denied access to it, in its entirety, under the invasion of privacy exemption in section 21(1) of the Act.

The appellant appealed the decision of the LCBO to deny access to the record.

A Notice of Inquiry was provided to the appellant, the LCBO and two other individuals whose rights may be affected by the disclosure of the information contained in the record (the affected persons). Because it appeared that the record contains the personal information of the appellant, as well as other identifiable individuals, the parties to the appeal were asked to consider the possible application of section 49(b) (invasion of privacy) to it. Representations were received from all of the parties to the appeal.

The record at issue consists of a three-page letter dated March 19, 1998.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, as recorded information about an identifiable individual. I have reviewed the record at issue and find that it contains the personal information of the appellant and the two affected persons.

INVASION OF PRIVACY

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the LCBO determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, it has the discretion to deny the requester access to that information.

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 section 21(2).

The appellant submits that the disclosure of the information in the record is necessary in order for him to respond to the allegations contained therein. He argues that this information relates to him and is slanderous and false. He goes on to indicate that it is improper to withhold access to this information under section 21(1). The appellant's arguments focus on the fact that, in his view, the disclosure of the information is relevant to a fair determination of his rights under section 21(2)(d).

The affected persons submit that the information is of a personal nature and that it should not be disclosed to the appellant.

The LCBO submits that several of the considerations listed in section 21(2) are applicable to the information in the record. It indicates that, should the information be disclosed, the affected persons will be unfairly exposed to pecuniary or other harm (section 21(2)(e)). The LCBO also submits that the information in the record is highly sensitive (section 21(2)(f)), was provided to it in confidence (section 21(2)(h)) and that its disclosure may unfairly damage the reputation of the affected persons (section 21(2)(i)).

I have reviewed the submissions of the parties and the record itself and have come to the following conclusions:

1. The information contained in the record may properly be characterized as highly sensitive, within the meaning of section 21(2)(f). I find that the statements contained in the record are highly sensitive in nature as they relate directly to the affected persons' view of what is clearly a difficult situation between the appellant and themselves.
2. Based on the submissions of the LCBO and the affected persons, I am satisfied that the information contained in the record was provided with an expectation that it would be treated confidentially. I find this factor to be particularly compelling in the circumstances of this appeal because of the acrimony which exists between these parties, as evidenced by the contents of the letter itself.
3. I have been provided with sufficient information to find that the disclosure of the information contained in the record will unfairly expose the affected persons to pecuniary or other harm, as contemplated by section 21(2)(e). The submissions of the LCBO and the record itself clearly describe the appellant's animosity towards the affected persons.
4. I am not satisfied that the disclosure of the personal information contained in the record is relevant to a fair determination of the appellant's rights within the meaning of section 21(2)(d). Previous orders have held that the appellant's right must be a legal one which is related to an existing or contemplated proceeding [Order P-312]. I have not been apprised of any action or proceedings instituted by the appellant where his rights in relation to those of the affected persons are being determined. Accordingly, I cannot agree that the disclosure of the record is relevant to a fair determination of the appellant's rights within the meaning of section 21(2)(d).

Balancing the appellant's right of access to information against the privacy rights of the affected persons, I find that the factors favouring privacy protection are far more compelling in the circumstances of this appeal. As section 21(4) has no application and the appellant has not argued that section 23 applies, I find that the record is properly exempt from disclosure under section 49(b).

ORDER:

I uphold the decision of the LCBO to deny access to the record.

Original signed by: _____
Donald Hale
Adjudicator

_____ October 28, 1998