



Information and Privacy  
Commissioner/Ontario

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

# Reconsideration Order R-980030

Appeal P\_9800096

ORDER P-1609

Ministry of Community and Social Services



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## **NATURE OF RECONSIDERATION REQUEST:**

On August 28, 1998, I issued Order P-1609 in which I upheld a decision of the Ministry of Community and Social Services (the Ministry) to deny access to certain records under the Freedom of Information and Protection of Privacy Act (the Act). In that order, I also found that certain records were not exempt from disclosure under the Act and ordered that they be disclosed to the appellant by the Ministry by October 5, 1998.

By letter dated October 6, 1998, I received a request for the reconsideration of Order P-1609 from counsel to the affected parties to the appeal on the basis that there was a fundamental defect in the adjudication process which gave rise to the order. On October 22, 1998, I responded to the reconsideration request by declining to reconsider my decision to order the disclosure of the majority of the records which I found were not exempt in Order P-1609, with one exception. These records were disclosed to the appellant by the Ministry on or about November 2, 1998, in accordance with my October 22, 1998 letter. I found, however, that the affected parties had established prima facie grounds for the reconsideration of Order P-1609 only with respect to Record 21.

As was clearly indicated in my letter of October 22, 1998 and the accompanying Notice of Reconsideration, the sole record to be addressed in the reconsideration was Record 21. The affected party, the appellant and the Ministry were asked to make submissions on whether Record 21 was responsive to the request as originally framed and whether it was exempt under section 17(1) of the Act.

I have received submissions from the Ministry and the affected party.

## **DISCUSSION:**

### **DOES THE RECONSIDERATION REQUEST FIT WITHIN THE COMMISSIONER'S RECONSIDERATION POLICY?**

The Commissioner's Reconsideration Policy, describing the threshold for proceeding with a reconsideration, reads as follows:

- 1.1 A decision maker may reconsider a decision where it is established that:
  - (a) there is a fundamental defect in the adjudication process;
  - (b) there is some other jurisdictional defect in the adjudication process; or
  - (c) there is a clerical error, accidental error or omission or other similar error in the decision.

- 1.2 A decision maker will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was obtainable at the time of the decision.

The affected party submits that Record 21 falls outside the ambit of the appellant's request as it was created prior to the time frame specified in the request. These submissions were also included in the representations made by the affected party in the original inquiry. It argues that, as a result of my consideration of this record, there was a jurisdictional defect in Order P-1609 because I addressed the application of the Act to a record which fell outside the ambit of the request. Having reviewed my reasons in Order P-1609, I find that I did not specifically address the issue of whether Record 21 was, in fact, responsive to the request and that by not doing so, there was a jurisdictional error in the adjudication process.

Because the affected party has established that a jurisdictional defect occurred in the adjudication process, I find that the reconsideration request falls within the Commissioner's policy statement and I will proceed with the reconsideration of my treatment of Record 21 in Order P-1609.

### **RESPONSIVENESS OF THE RECORD**

The first issue raised by the affected party in its request for reconsideration was whether Record 21 is responsive to the request, as originally framed. The request was for records created between February 1, 1997 and the date of the request, July 11, 1997. In its reconsideration request of October 6, 1998, the affected party argues that Record 21 "was not produced nor sent as an annex to any correspondence for the time period in question." Accordingly, the affected party submits that Record 21, which was produced in the fall of 1996, falls outside the time period specified in the original request and is not, therefore, responsive to it.

The Ministry points out that Record 21 is an attachment to, and is also referred to in Record 20, a letter dated March 21, 1997, a date which falls within the time period described in the request. I note that paragraph 3 of Record 20 refers specifically to an "attached financial sheet", which comprises Record 21, contrary to the submissions of the affected party.

In my view, it is clear that both Records 20 and 21 were sent to the Ministry by the affected party on March 21, 1997. Both records fall, accordingly, within the time period specified in the original request. Record 21 is, therefore, responsive to the appellant's request as originally framed.

### **THIRD PARTY INFORMATION**

The affected party submitted in its original representations that Record 21 is exempt from disclosure under section 17(1) as it contains confidential information with respect to financial strategies and plans which is sensitive to its negotiations with the union representing its employees. It argued that the release of Record 21 would significantly affect its negotiations with the union.

In its reconsideration request, the affected party submits that, in Order P-1609, I decided to exempt from disclosure those records which “include projected budget levels with respect to staffing”. It argues that Record 21 clearly meets that definition.

I have examined my treatment of Record 21 in Order P-1609 and I am not persuaded that an error occurred which fits within the Commissioner’s reconsideration policy.

**ORDER:**

1. I uphold the Ministry’s decision to disclose Record 21 and order the Ministry to provide the appellant with a copy by January 18, 1999 but not before January 12, 1999.
2. In order to verify compliance with the terms of this reconsideration order I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ December 4, 1998