



Information and Privacy
Commissioner/Ontario

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

RECONSIDERATION ORDER PO-1739-R

ORDER PO-1725

Appeals PA-990117-1, PA-990118-1 and PA-990076-1

Cabinet Office



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>

BACKGROUND:

On November 4, 1999 I issued Order PO-1725, which addressed the decisions by Cabinet Office under the Freedom of Information and Protection of Privacy Act (the Act) to deny access to some of the requested records in Appeals PA-990117-1, PA-990118-1 and PA-990076-1. The records in these appeals consisted of the individual entries in the appointment calendar of a named employee of the Premier's Office, for the time period June 1995 to September 15, 1998.

In Order PO-1725 I upheld the decision of Cabinet Office to deny access to several of the entries pursuant to section 21(1) of the Act, and ordered the disclosure of other entries I found did not qualify for this exemption claim. In reaching this decision, I discussed the definition of "personal information" in section 2(1) of the Act, and in particular the distinction between information relating to an individual's personal and professional capacities:

The Commissioner has recognized a distinction between the personal and professional capacities in which information concerning the activities of government employees/officials are reflected in records. Sometimes records will contain information specifically enumerated in the definition of personal information at section 2(1) of the Act, in which case the proper characterization is straightforward. In other cases, where it is clear that a government employee/official is acting in a professional or official capacity, past orders of this Office have found that references to employees in records generated in the normal course of these professional/official activities are not "about" the individual and, therefore, do not qualify as personal information (see Orders 139, P-157, P-257, P-326, P-377, 194, M-82, P-477 and P-470 and Reconsideration Order R-980015). In Order 139, for example, the name and professional affiliation of a welfare worker who had lodged a complaint in her official capacity about the eligibility of another individual to receive benefits was held not to constitute the welfare worker's personal information where this information appeared in a report of the complaint.

Cabinet Office appears to accept this distinction, and has disclosed a number of records which contain references to appointments made by/for the named employee with other employees in the Premier's Office, Cabinet Office and ministries of the Ontario government. Having reviewed the remaining records, and considered the various representations submitted in response to the Notice of Inquiry, I find that other entries also relate to scheduled meetings between the named employee and other government employees in the normal course of their professional activities. In my view, the information contained in these entries is not "about" the named employee or other employees, and does not qualify as their personal information for the purposes of section 2(1).

In this context, I found that the entry for June 25, 1998 at 5:30 p.m. comprised professional capacity information which did not satisfy the definition of personal information and, therefore, did not qualify for exemption under section 21(1) of the Act.

I received a letter dated November 30, 1999 from one of the parties asking me to reconsider Order PO-1725 as it related to the June 25, 1998 at 5:30 p.m. entry, on the basis that I had made an accidental error and/or that there was a jurisdictional defect in my decision with respect to this entry.

I sent a Notice of Reconsideration to the party requesting reconsideration, the requester and Cabinet Office. Only the party requesting reconsideration submitted representations.

SHOULD ORDER PO-1725 BE RECONSIDERED

The reconsideration policy of the Commissioner's office provides as follows:

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 decision; or
- (c) there is a clerical error, accidental error or omission or similar error in the decision.

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 party requesting reconsideration submits that I made an accidental error in concluding that the entry for June 25, 1998 at 5:30 p.m. did not contain personal information. This party submits that the entry describes a social event unrelated to employment responsibilities, and relies on uncontradicted evidence before me in the original inquiry. Accordingly, this party requests that I find that the June 25, 1998 at 5:30 p.m. entry contains personal information which is exempt from disclosure pursuant to section 21(1) of the Act.

I have reviewed the pertinent representations provided during the course of these appeals, as well as the subsequent representations from the party requesting reconsideration. As the result of an oversight in applying the factors which I considered in drawing the personal/professional capacity distinction, I accept that I made an accidental error in concluding that the entry for June 25, 1998 at 5:30 p.m. did not contain personal information. This error had a direct bearing on my finding that this entry did not qualify for exemption under section 21(1) of the Act. Therefore, the reconsideration request falls within the scope of the policy.

DISCUSSION:

PERSONAL INFORMATION

Personal information is defined broadly in section 2(1) of the Act to mean recorded information about an identifiable individual.

In Order P0-1725, I found that information relating to named and/or identifiable individuals, such as their personal addresses, telephone numbers, birthdays, vacation times, social activities, recreational activities and/or medical appointments, is clearly the personal information of those individuals within the meaning of section 2(1) of the Act. I also found that entries relating to activities undertaken by the named employee in his capacity as a member of the Progressive Conservative Party of Ontario or his involvement in partisan political activity at the constituency level, and entries relating to employees of the Premier's Office performing political party functions in addition to their roles as employees of the institution, qualify as personal information.

Applying the factors considered in Order PO-1725 in drawing the personal/professional capacity distinction, it is clear that the June 25, 1998 at 5:30 p.m. entry falls within the type or class of information described above and, therefore, satisfies the definition of personal information under section 2(1).

INVASION OF PRIVACY

Section 21(1) of the Act prohibits the disclosure of personal information except in certain circumstances. One of these exceptions is found in section 21(1)(f), which reads:

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.

The requester has provided no representations on the issue of whether disclosure of personal information would constitute an unjustified invasion of privacy under section 21(1) of the Act. In Order PO-1725, I was unable to find that the section 21(1)(f) exception applied in the absence of any representations from the requester addressing this issue, or other evidence supporting a finding that disclosure of this personal information would not constitute an unjustified invasion of personal privacy. I am faced with precisely the same circumstances in this reconsideration. Accordingly, I find that the entry for June 25, 1998 at 5:30p.m. qualifies for exemption under the mandatory requirements of section 21(1) of the Act.

ORDER:

1. I rescind Order Provision 2 of Order PO-1725 as it relates to the entry for June 25, 1998 at 5:30 p.m.
2. I uphold the decision of Cabinet Office not to disclose the entry for June 25, 1998 at 5:30 p.m.

Original signed by: _____

_____ January 13, 2000

Tom Mitchinson

Assistant Commissioner