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

ORDER PO-2711

Appeal PA07-385

Queen's University

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NATURE OF THE APPEAL:

Queen's University (the University) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from an individual who had been accused of academic dishonesty, but was later cleared. In seeking access to records related to the academic dishonesty matter, the requester stated, in part:

> I want to see all the explanations of the person who stole and used my work, and especially with the name of the author clearly shown. That includes all initial statements up to and including any appeal in the matter. …

The University identified 16 records as responsive to the request and granted access to nine of them, in their entirety. The remaining seven records were disclosed in part, but information relating to three other individuals was withheld pursuant to the mandatory exemption in section 21(1) (personal privacy) of the *Act*.

The requester (now the appellant) appealed the University's decision.

This office appointed a mediator to assist the parties in resolving the issues between them. The appellant confirmed that access to all of the withheld information pertaining to the other student involved in the academic dishonesty matter (the affected party) would be pursued, but that the names of the affected party's lab partners would not. Accordingly, the names of the affected party's lab partners were removed from the scope of this appeal.

The mediator notified the affected party of the appeal in an attempt to determine whether that individual would consent to the release of his/her name and other information in the records to the appellant. The affected party did not provide consent. Since this matter could not be resolved by mediation, the appeal was transferred to the adjudication stage of the appeal process and assigned to me to conduct an inquiry.

I sent a Notice of Inquiry outlining the facts and issues to the appellant, initially, to seek representations. Based on my review of the information in the file, I asked the appellant to comment on the possible application of the presumption against disclosure in section 21(3)(d) (employment or educational history) of the *Act* to the records. Upon review of the appellant's representations, I determined that it would not be necessary to invite representations from the University.

RECORDS:

The information at issue in the appeal consists of portions of 11 pages of lab reports, emails and correspondence.

DISCUSSION:

PERSONAL INFORMATION

For the purpose of deciding whether or not the disclosure of the records would constitute an unjustified invasion of personal privacy under the mandatory exemption in section 21(1), it is necessary to decide first whether the record contains "personal information" and, if so, to whom it relates. Only personal information can be exempt under the personal privacy exemption at section 21(1), which the University relies on in denying access.

The definition of personal information is found in section 2(1) of the *Act* and reads, in its entirety, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Representations and Findings

The appellant's representations on this issue focus on one aspect of the withheld information, the name of the affected party. The appellant submits that:

> In section 2(1), the name of the person is only mentioned in subsection (h). Revealing that person's name does not invoke any of the other subsections of section 2(1). It is not protected by subsections (a) through (g), and (h) does not absolutely prohibit disclosure of the name.

Analysis and Findings

I have reviewed the seven records remaining at issue to determine whether they contain personal information and, if so, to whom the information relates. Having done so, I find that the records contain the personal information of the affected party, only, within the meaning ascribed to that term by the definition in section 2(1) of the *Act*.

In addition, for the purposes of my analysis, the name of the affected party cannot be separated from other personal information about that individual found in the records. The remaining information remains identifiable as that individual's personal information. Accordingly, I will now review the application of section 21(1) to the affected party's personal information.

PERSONAL PRIVACY

The University takes the position that the undisclosed portions of the records are exempt under the mandatory exemption in section 21(1).

A mandatory exemption is one an institution (such as the University) is obliged to apply to information that fits within the parameters of the exemption. Accordingly, where a requester seeks the personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. In the circumstances of this appeal, it appears that the only exception that could apply is paragraph (f).

The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f).

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. The parties do not claim that section 21(4) applies in the circumstances of this appeal, and I find that it does not.

The appellant submits that section 21(2)(d) of the *Act* applies in the circumstances of this appeal. As previously stated, I also sought the appellant's representations on the possible application of the presumption in section 21(3)(d), through the Notice of Inquiry. The relevant parts of section 21 read:

> (2) 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,
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (d) relates to employment or educational history;

Representations

The appellant submits that she should be afforded the same right of access to the records as the individual within the University who conducted an investigation into her "treatment at the University." The appellant states:

> The University had no problem in sharing the information within the institution. However, there appears to be an artificial line, in which students are not considered part of the institution. … As part of the institution, I should be given the same access to that person's name as [the internal investigator]. My request should have been considered as an internal sharing of information. If releasing documents with that person's name to [the internal investigator] is not a breach of privacy, then neither is releasing that same information to me.

With regard to the possible application of section 21(3)(d), the appellant submits:

> I have just requested the name of the individual, and as you cited in Order P-216, the name does not constitute "employment history," and in this case it does constitute educational history.

The appellant takes the position that section 21(2)(d) (fair determination of rights) is relevant in the circumstances of this appeal. Her submissions on this factor state, in part:

> Withholding the identity of the person who has taken my work has severely impeded my ability to clear my name. … See [attached] appendix B. It will show that there are still documents floating around, within the Faculty, that I cheated. I want to fully clear my name and this information is required. … I need this person's name so that I can prosecute this matter in a court of competent jurisdiction.

Analysis and Findings

I will begin by addressing the appellant's argument that she should have the same right of access to the withheld information as the University investigator. The use and disclosure of personal information by institutions outside the context of an access request (such as the one submitted by the appellant in this case) is governed under Part III of the *Act*, in particular sections 41 and 42. That issue is not before me in this appeal.

My jurisdiction and authority are determined by the *Act*, and I am bound by its provisions. My inquiry and this order cannot, and will not, address the fairness of the proceedings conducted by the University that led to the access request and, subsequently, became the subject of this appeal. Rather, I must decide whether the mandatory exemption found at section 21(1) of the *Act* applies to the withheld information that is responsive to the appellant's access request made under Part II of the *Act*.

Part II of the *Act* outlines the right of access and the exemptions from the right of access. Section 21 provides for a mandatory exemption from the right of access when the information at issue consists of the personal information of an individual other than the person requesting access.

Past orders of this office regarding the application of the presumption against disclosure in sections 21(3)(d) and 14(3)(d) (the municipal equivalent of section 21(3)(d)) have much more frequently addressed the employment context, rather than the educational context. However, in my view, past orders interpreting the meaning of the term "relates to employment history" are instructive for the purposes of my analysis here. Such orders have often made a distinction between "single, discrete events" and "a narrative of events" taking place during an individual's employment with the institution. In other words, information relating to a single event has been found to be insufficient to constitute a "history", while information describing a series of events would represent a "history" and thereby satisfy the requirements of this section [see Orders M-609, P-1027].

In Order PO-1741, Adjudicator Laurel Cropley considered the application of section 21(3)(d) to records related to the appellant's deceased father's employment with the Ontario Provincial Police. In that appeal, Adjudicator Cropley considered both the subject matter and the time-span of the records at issue and was persuaded that section 21(3)(d) applied to the records. She stated:

> … The issues relating to the deceased's workmen's compensation claim and return to work with the OPP spanned a one year period and **formed a significant part of the deceased's work-related association with the OPP**. In my view, these records directly pertain to past events relating to the deceased's ability to perform the requirements of his job with the OPP, … I find that they are an **integral part of the deceased's past employment** with the OPP and thus relate to his employment history [emphasis added].

More recently, in Order MO-2291, Senior Adjudicator John Higgins addressed the presumption in section 14(3)(d) of the municipal *Act* in the context of a request for access to records in the custody of a school board (the Board). The records related to two incidents that took place at a specific school, and which resulted in two students being disciplined. The requester was a parent with children attending that school, but he was not the parent of either of the disciplined students. The records at issue in Order MO-2291 included reports describing the incidents, as well as a copy of the letter sent to the students' parents or guardians describing the incident, outlining the reasons for the penalty given to the student, and referring to the relevant provisions of the *Education Act* and the Board's Policy and Procedures Manual. In that appeal, the Senior Adjudicator received representations from the Board indicating that the records at issue constituted part of the affected students' permanent Ontario School Record (OSR). In finding the records to be subject to the presumption in section 14(3)(d), Senior Adjudicator Higgins stated:

> I have reviewed the records, and I accept the Board's evidence that all of them form part of the OSR, which is, in effect, the core of a student's educational history. I therefore find that the presumption at section 14(3)(d) applies to all of the records.

I agree with the reasoning of Adjudicator Cropley in Order PO-1741 and Senior Adjudicator Higgins in Order MO-2291, and will apply it in the present appeal.

I have reviewed the records and conclude that there are clear similarities between the records at issue in this appeal and those records that were under consideration in Order MO-2291. I note in particular that the records in this appeal describe the progress of the investigation into the affected party's involvement in the academic dishonesty matter. The records also include a University letter to the affected party that describes the penalty and the reasons for it, with reference to provisions contained in the course materials, faculty procedures and the University policy on academic dishonesty. Accordingly, I am satisfied that the records form part of the affected party's University record which, in effect, chronicles that individual's educational history with the institution.

Moreover, I note that the records present a narrative of the events surrounding the circumstances of the affected party's academic dishonesty matter that span a time period of nearly four months. As was the case with the records reviewed by Adjudicator Cropley in Order PO-1741, I am persuaded that the records before me form a significant and integral part of the affected party's education-related association with the University. For all of these reasons, I find that the information relates to the affected party's educational history within the meaning of the presumption in section 21(3)(d).

In the circumstances, I am satisfied that section 21(3)(d) applies to the undisclosed information in the records. Accordingly, I find that the disclosure of these portions of the records is presumed to constitute an unjustified invasion of personal privacy under section 21(1).

As stated above, section 21(4) does not apply. No one factor, or combination of factors, in section 21(2) can overcome the presumption in section 21(3)(d) (per *John Doe*, cited above) and it is not necessary for me to review the possible relevance of the considerations in section 21(2).

Accordingly, I find that disclosure of the withheld information in the records would constitute an unjustified invasion of personal privacy. The exception to the section 21(1) exemption in section 21(1)(f) does not apply, and the personal information is exempt under section 21(1), subject to possible disclosure under the public interest override, which I will address below.

PUBLIC INTEREST OVERRIDE

The appellant argues that the public interest override in section 23 of the *Act* applies to the information at issue. Section 23 of the *Act* states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In the present appeal, then, section 23 could be applied to override the personal privacy exemption in section 21(1) if the following two requirements are satisfied. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

Compelling public interest in disclosure

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner),* [1999] O.J. No. 488 (C.A.)]

- the integrity of the criminal justice system has been called into question [Order P-1779]

- public safety issues relating to the operation of nuclear facilities have been raised [Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner),* [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805]

- disclosure would shed light on the safe operation of petrochemical facilities [Order P-1175] or the province's ability to prepare for a nuclear emergency [Order P-901]

- the records contain information about contributions to municipal election campaigns [*Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773]

A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391, M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]

Purpose of the exemption

The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances of the appeal.

Representations

The initial reference to the possible application of the public interest override appeared in the appellant's letter of appeal, where she cited the provision and stated the following:

> There is a compelling public interest that has to be considered. In the quasi-judicial proceedings of Queen's University, I contend that they are using [the *Act*] as a shield.

The appellant's position is, as I understand it, that the University's reliance upon the *Act* to deny access to the information she is seeking is an attempt to avoid scrutiny of the academic dishonesty proceedings. Her representations suggest that the proceedings were not conducted in a sufficiently open and fair manner because "[the] evidence was not fully disclosed to me."

The appellant submits that universities are becoming more vigilant in dealing with academic dishonesty and submits that "[i]f a student is a victim of theft of their work, they must be given the name of the person who took their work, so that they may be able to adequately defend themselves." The appellant suggests that the privacy rights of "the thief" are "vastly outweigh[ed]" by the entitlement of the other individual to clear their name and thereby remove the potential for the incident to jeopardize the innocent student's future.

Analysis and Findings

In order for me to find that section 23 of the *Act* applies to override the exemption of the information I have found to qualify under section 21(1), I must be satisfied that there is a *compelling* public interest in the *disclosure of that particular information* that *clearly outweighs* the purpose of the personal privacy exemption.

Based on my review of the appellant's representations, and in the circumstances of this appeal, I am not satisfied that a public interest exists in the disclosure of the personal information remaining at issue.

It could plausibly be argued that the public has an interest in ensuring the integrity of post-secondary education and accreditation, and that vigilance in matters respecting academic dishonesty is an important element of that larger goal. However, I am not persuaded by the evidence that there is any relationship between the disclosure of the information remaining at issue and the *Act*'s central purpose of shedding light on the operations of government and other institutions subject to the *Act*.

Moreover, in my view, the interest at stake in this appeal is essentially private in nature. I accept that the appellant wishes to move beyond this unfortunate experience. However, in my view, seeking to accomplish this by obtaining access to the personal information of another individual does not constitute a matter of public interest.

Furthermore, I note that the University disclosed a substantial amount of information in response to the request. Any public interest considerations that could be said to exist in ensuring the

integrity of post-secondary accreditation have, in my view, already been served since this disclosure would permit scrutiny of the academic dishonesty investigation process. Moreover, it does so without compromising personal privacy.

For the reasons expressed above, I find that there is no public interest in the disclosure of the exempt information. Since the first part of the test for the application of the public interest override is not met, it is unnecessary for me to review the second part of the test. I find that section 23 does not apply in the circumstances of this appeal.

ORDER:

I uphold the University's decision to deny access to the withheld portions of the records.

Original signed by: August 21, 2008
Daphne Loukidelis
Adjudicator