

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3115

Appeal PA12-131

Ministry of Education

October 4, 2012

**Summary:** This is an appeal by a third party of a decision made by the Ministry of Education to provide access, in full, to an application for a temporary letter of approval and a specified temporary letter of approval. The appellant claimed the application of the mandatory exemption in section 21(1) (personal privacy). During the mediation of the appeal, the original requester raised the possible application of the public interest override in section 23. In this order, the adjudicator finds that portions of the records contain personal information that is either no longer at issue, or exempt under section 21(1). The adjudicator also finds that the public interest is not sufficiently compelling to override the exemption in section 21(1). The appeal is upheld, in part, and the ministry is ordered to disclose portions of the record to the original requester.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2 (definition of personal information), 21(1), 21(3)(d) and 23.

### OVERVIEW:

[1] This order disposes of the issues raised as a result of a decision of the Ministry of Education (the ministry) in response to a request made under *the Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

- The temporary Letter of Approval required under Regulation 298 of the Education Act applied for by the [specified District School Board] for [a named individual], (OCT registration #...) for the school year which commenced September, 2011.
- The signed declaration from the director of education, or other school official authorized to make the application, stating that the requirements of Regulation 298 have been met.

[2] In response to the request, the ministry located responsive records and notified a third party of the request. The ministry then issued a decision letter to the original requester (the requester), denying access to the records, claiming the mandatory exemption in section 21(1) (personal privacy) of the *Act*. The requester appealed the ministry's decision to this office and an appeal file was opened. As a result of mediation, the ministry issued a revised decision letter to the appellant, advising that it was no longer claiming the exemption in section 21(1) of the *Act*, and, further, that the third party had 30 days to appeal the revised decision.

[3] The third party (now the appellant) appealed the ministry's revised decision to this office.

[4] During the mediation of the appeal, the mediator contacted the requester who is seeking access to the responsive records. The requester was of the view that there is a public interest in the disclosure of the records at issue. The possible application of the "public interest override" in section 23 of the *Act* was, therefore, added as an issue in the appeal.

[5] As mediation was not successful, the appeal was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought representations from the appellant, the ministry and the requester. I subsequently received representations from the appellant and the requester. The ministry advised this office that it would not be providing representations. The parties' representations were shared in accordance with this office's *Practice Direction 7*.

[6] For the reasons that follow, I uphold the appeal, in part, and order the ministry to disclose the records to the requester, subject to those portions which I find to be either exempt under the *Act* or no longer at issue. I also find that the public interest override in section 23 is not applicable.

## **RECORDS:**

[7] The records consist of a temporary letter of approval and an application for a temporary letter of approval.

## **ISSUES:**

- A: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B: Does the mandatory exemption at section 21(1) apply to the information at issue?
- C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 21 exemption?

## **DISCUSSION:**

### **Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[8] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1). The relevant portion of that section reads:

"personal information" means recorded information about an identifiable individual, including,

- (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,

Section 2(3) also relate to the definition of personal information and states:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[9] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>1</sup>

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<sup>1</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

[10] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>2</sup>

[11] The appellant submits that the records contain his personal information and that members of the general public would know his identity should the records be disclosed, even if his name was severed, because he resides in a small community and is the only educator teaching particular courses in the school. The appellant also submits that his employment history is contained in the records, which is his personal information.

[12] The requester states that he would not object to the records being disclosed with the appellant's name and OCT<sup>3</sup> number severed. Consequently, the appellant's name and OCT number are no longer at issue and shall not be disclosed, regardless of my findings with respect to the other portions of the records.

[13] I have reviewed the records and find that portions contain information about the appellant's employment and educational history, as contemplated by paragraph (b) of the definition of that term in section 2(1).

[14] Previous orders have established that, to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup> In some circumstances, if names are severed from the record, the individual ceases to be identifiable. In the circumstances of this appeal, I find that even with the appellant's name severed from the records, the narrative descriptions contain sufficiently detailed information that it is reasonable to expect he may be identified given the community in which he resides. Accordingly, I find that portions of the records qualify as the education and employment history of the appellant as contemplated by paragraph (b) of the "personal information" definition of section 2(1). I must now determine whether section 21(1) applies to exempt this information from disclosure.

[15] The remaining information in the records does not constitute personal information, as it refers to the appellant in his professional capacity only. Consequently, as no other mandatory exemptions apply, I will order the ministry to disclose that information to the requester.

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<sup>2</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>3</sup> Ontario College of Teachers' registration number.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [202] O.J. No. 4300 (C.A.).

**Issue B: Does the mandatory exemption at section 21(1) apply to the information at issue?**

[16] Where a requester seeks 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.

[17] In order for the section 21(1)(f) exception to the mandatory exemption in section 21(1) to apply, it must be established that disclosure would not be an unjustified invasion of personal privacy. Sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 21(2) provides some criteria for the institution to consider in making this determination; section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy; section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[18] The presumption at section 21(3)(d) of the *Act* may apply in this appeal, which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

relates to employment or educational history;

[19] The appellant submits that the records contain his employment history and that the presumption in section 21(3)(d) applies to exempt the records from being disclosed.

[20] The requester submits that section 21(1)(f) does not apply, as “disclosure is already on the OCT [Ontario College of Teachers] website.” The requester also cites some of the factors in section 21(2) which weigh in favour of disclosure.

[21] As previously stated, I have reviewed the record and find that it contains information relating to the educational and employment history of the appellant. Previous orders issued by this office have found that start and end dates of employment,<sup>5</sup> employment histories,<sup>6</sup> and academic qualifications<sup>7</sup> fall within the scope of section 21(3)(d). This is the type of personal information at issue in this appeal. Therefore, I find that disclosure of the personal information in the records would constitute a presumed unjustified invasion of privacy under section 21(3)(d) of the *Act*.

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<sup>5</sup> Order PO-1885.

<sup>6</sup> Order MO-1609.

<sup>7</sup> Order P-1290.

[22] The Divisional Court has held that once a presumption against disclosure under section 21(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2). A section 21(3) presumption can be overcome, however, if the personal information at issue is caught by section 21(4) or if the “compelling public interest” override at section 23 applies.<sup>8</sup> Section 23 has been raised by the requester and will be dealt with below. In my view, section 21(4) has no application to the circumstances of this appeal.

[23] Consequently, I find that the appellant’s educational and employment history information is exempt from disclosure under section 21(1), as the release of this information would give rise to an unjustified invasion of his privacy.

**Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 21 exemption?**

[24] Section 23 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.

[25] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[26] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.<sup>9</sup>

[27] The requester has raised the application of the public interest override, and submits that there is a public interest in the disclosure of the records in order to subject the activities of the ministry and school boards to public scrutiny. By way of background, the requester states that a secondary school laid off a “fully tech-qualified” teacher and replaced them with a teacher with more seniority, but who does not meet the minimum requirements established by the union and the Ontario College of Teachers. The requester goes on to state that letters of approval are frequently granted when teachers with the proper qualifications needed are unavailable.

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<sup>8</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

<sup>9</sup> Order P-244.

[28] In this scenario, however, the requester is of the view that the school board assigned a letter of approval without the proper qualifications, and in contravention of the *Education Act*.

[29] The requester states:

Skilled trade shortages are at an all-time high, and I believe our education system is still not recognizing the vital role they play in preparing the young apprentice of tomorrow for a safe entrance into a skilled trade. Our kids cannot get the health and safety background without a skilled and knowledgeable tech-qualified teacher.

. . .

Non tech-qualified teachers are being deemed competent to safely teach in an environment they are not familiar with, by some principals who themselves don't have a technology background . . . without meeting the minimum requirements set out by Regulation 298 of the *Education Act*, which states they shall have due regard for the provision of the best possible program and the safety and well-being of the pupils.

These unsafe decisions being made by the principals are not being questioned by anyone at a higher level, or by a union that rules by seniority for the most part, before signing this Letter of Approval. . .

[emphasis added]

[30] In response, the appellant submits that disclosure of his personal information will not shed any light on the operations of government and that, in fact, the ministry outlines the temporary approval process in a publicly available policy/program memorandum.<sup>10</sup> Further, the appellant states that the approval process has already been explained to the requester by the principal at the school, the union's president and a school board superintendent. Lastly, the appellant argues that "tens of thousands" of temporary letters of approval have been granted in the past and that the requester could achieve his stated goal without having to obtain access to his personal information.

[31] 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.<sup>11</sup> 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 or enlightening the

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<sup>10</sup> Both the appellant and the requester provided copies of this memorandum to this office.

<sup>11</sup> Orders P-984, PO-2607.

citizenry about the activities of their government or its agencies, 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.<sup>12</sup>

[32] In my view, while there may be a public interest in how the approval process takes place, there is no public interest in the disclosure of the appellant's personal information. In addition, I note that the disclosure of the appellant's personal information would not respond to any of the public interest issues raised by the requester. Further, I find that the disclosure of the information that is not exempt under section 21(1) is sufficient to address any public interest issues.

[33] Consequently, I find that the public interest override at section 23 is not applicable in the circumstances of this appeal.

[34] In summary, I find that the appeal is upheld, in part. The personal information in the records is either no longer at issue, or exempt under section 21(1). The public interest override in section 23 is not applicable. The ministry is ordered to disclose portions of the records to the requester.

## **ORDER:**

1. I order the ministry to disclose the records to the requester, with the exception of those portions of the records that are either no longer at issue or are exempt under section 21(1). I have enclosed copies of the records. The highlighted portions are not to be disclosed to the requester. The ministry is ordered to disclose this information to the appellant by no later than **November 9, 2012**, but not before **November 2, 2012**.
2. In order to verify compliance with order provision 1, I reserve the right to require that the ministry provide me with a copy of the records sent to the requester.

Original signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

October 4, 2012  
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<sup>12</sup> Orders P-984 and PO-2556.