



Information and Privacy
Commissioner/Ontario

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

ORDER 97

Appeal 890063

Ministry of Community and Social Services



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September 28, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 97
Appeal Number 890063
Ministry of Community and Social Services

This letter constitutes my Order in your appeal from the decision of the Ministry of Community and Social Services (the "institution") regarding your request for information made under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

The appeal file indicates that on January 17, 1989, you wrote to the institution asking for access to the following materials which related to a job competition in which you had been an unsuccessful candidate:

1. Copy of the Selection Criteria developed for the interview
2. Copy of Standardized Questions formulated based on the Selection Criteria
3. Copy of Expected Answers to the questions
4. Copies of my interview responses, ratings and rankings, as well as that of the candidate you have hired for the position

[IPC Order 97/September 28, 1989]

5. Details of the hired candidate's educational background, knowledge, skills and experience

By letter dated February 14, 1989, the institution responded to your request as follows:

Access is granted to copies of the Selection Criteria, the questions and related defined ratings, your ratings, the handwritten notes of the Selection Committee Members, and the total rating of the successful candidate. The handwritten notes of the Selection Committee Members are not verbatim recordings of your responses, but notes which are to assist the Committee members in rating each candidate at the end of their interview. Should you find these photocopies too difficult to read, arrangements can be made with Diane Connors to review the originals at the Kingston Area Office.

Access is denied to the successful candidate's responses and ratings for each selection criteria (sic) as well as the selected candidate's education, knowledge, skills and experience under Section 21(3)(d) of the Act. This provision applies as this is considered to be an unjustified invasion of that individual's privacy.

On March 9, 1989, you wrote to me appealing the decision of the institution and I gave notice of the appeal to the institution on March 20, 1989. You point out in your letter that "the information requested is relevant and necessary for the fair determination of my rights" and that you are therefore "invoking Section 21(2)(d) of the Freedom of Information and Protection of Privacy Act" in order that the information be released.

As you know, as soon as your appeal was received by my office, an Appeals Officer was assigned to investigate the circumstances of the appeal and attempt to mediate a settlement.

The Appeals Officer obtained and reviewed the records in question. They consist of the successful candidate's three-page resume and one page of notes which are the Selection Committee's recordings of its interview with that person.

During mediation, the Appeals Officer contacted the successful candidate and inquired as to whether she would be willing to consent to the release of her resume to you, but she did not do so.

I had occasion to consider similar issues in my Orders 11 and 20 (Appeal Numbers 880022 and 880075), which were released on August 3, 1988 and October 7, 1988, respectively. On March 23, 1989, the Appeals Officer sent you copies of those Orders, wherein I found

that records similar to those you requested were exempt from disclosure pursuant to subsection 21(3)(d) and subsection 21(3)(g), respectively.

You indicated your wish that the case proceed to an inquiry, and accordingly, an Appeals Officer's Report was prepared and sent to you, the institution and the affected person (the successful candidate), on July 20, 1989, together with a Notice of Inquiry.

All parties were asked to make representations to me concerning the subject matter of the appeal.

Representations were received from you and the institution, while the affected person chose to rely on the arguments raised during mediation. I have taken all representations into account in reaching my decision.

Essentially, the issues in this appeal are as follows: Whether the records in issue contain "personal information" as defined by the Act and, if so, would disclosure of the information be an unjustified invasion of the personal privacy of another individual?

Subsection 2(1) defines personal information as follows:

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

...

(b) information relating to the education... or employment history of the individual...

...

(d) the address, telephone number, ...,

...

(g) the views or opinions of another individual about the individual, ...

In my view, the information contained in the successful candidate's three page resume is clearly personal information about the successful candidate, as defined by the Act. Further, the one page of notes which are the Selection Committee's recordings of its interview contain personal information about the successful candidate or express views or opinions about the successful candidate within the meaning of clauses (b) and (g) above.

The institution cited subsections 21(3)(d) and (g) as its basis for

refusing to disclose some of the requested information, as disclosure would result in an "unjustified invasion of personal privacy". Those subsections read as follows:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

...

(d) relates to employment or educational history

...

(g) consists of personal recommendations or evaluations, character references or personnel evaluations;

While the institution had not previously relied specifically on subsection 21(3)(g), there can be no serious argument made, in this case, that the Selection Committee's notes do not conform to the description set out in that subsection, and I also find that the resume clearly "relates to employment or educational history" as referred to in subsection 21(3)(d). Therefore, I find that disclosure of the record in question would be "presumed to constitute an unjustified invasion of personal privacy" according to the Act.

In its representations, the institution further submitted that:

...none of the exceptions in subsection 21(4) apply to this situation.

...that while the criteria under subsection 21(2) may be balanced against the presumed invasion of the individual's privacy under subsection (3), none of the factors enumerated in subsection (2) individually or cumulatively would oust the presumed invasion of the successful candidate's personal privacy.

...that the Appellant has not indicated how failure to have access to this information would prejudice his rights in any way. The Appellant has not provided an "extremely strong and compelling reason for disclosure to him"

...that pursuant to subsection 10(2), no information from either the resume or the one page of notes could reasonably be severed and released to the Appellant.

In your representations, you do not attempt to distinguish your

case from those that resulted in Orders 11 and 20. You do not argue that the information in question is not the personal information of the affected person. Instead you refer to the subjective elements in decision-making, and a few morally offensive legal and political decisions made by others in the past. You also rely on the general purposes of the Act as set out in subsection 1(a) and submit that subsections 21(2)(a), (d) and subsection 11(1) of the Act have "some direct bearing on the disposition" of your appeal.

After carefully considering your representations in this appeal, I find that this case is not essentially different from those that resulted in the other Orders which were referred to in this appeal.

Under subsection 1(b) of the Act, I have the responsibility of balancing the protection of individual privacy with the right of individuals to access to information and nothing in your representations has convinced me that the balance should now be shifted in favour of providing you with access.

Specifically, in reference to the argument that you make under section 11 of the Act, I find that that section has no application.

I concur with the institution when it states, in its representations, that you have not provided an "extremely strong and compelling reason for disclosure". Your references to your possibly proceeding with a complaint to the Ontario Human Rights Commission or to the Ombudsman do not constitute such a reason. One does not need to prove one's case prior to enlisting the aid of such bodies. For example, subsection 31(1) of the Ontario Human Rights Code provides as follows:

Where a person believes that a right of his under this Act has been infringed, the person may file with the Commission a complaint in a form approved by the Commission. (emphasis added)

The Human Rights Commission has a duty to investigate such complaints and, pursuant to subsection 32(3)(b) of the Code, it has the power to "request the production for inspection and examination of documents or things that are or may be relevant to the investigation". I therefore do not find the fact that you may wish to proceed with such a complaint, or a complaint to the Ombudsman to which similar reasoning would apply, to be factors which would rebut the presumed invasion of personal privacy of the affected person, in this case.

I note, with reference to the criteria set out in subsection 21(2) of the Act, that, in this case, none of the circumstances would operate to rebut the presumed unjustified invasion of personal

privacy of the affected person. Subsection 21(4) of the Act provides limitations on the presumptions set out in subsection 21(3) of the Act. However, I find that the information contained in the record in issue does not fall within one of the three situations described in that subsection. Nor have any other "relevant circumstances" been brought to my attention that would convince me to order the disclosure of these records.

In conclusion, in the circumstances of this case, I find that the presumption of an unjustified invasion of personal privacy is not rebutted and my Order is that the head's decision to deny access to the records at issue, in this appeal, is upheld.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Charles Beer
Minister of Community and Social Services

Ms Elizabeth Flavelle, FOI Co-ordinator

Affected Person