Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4572

Appeal PA21-00467

Ministry of Labour, Immigration, Training and Skills Development

November 13, 2024

Summary: An individual asked the ministry for a copy of a report relating to a carbon monoxide leak at her place of employment. The ministry granted the individual partial access to the requested records claiming that some portions were not responsive to the request and that disclosure of other portions would constitute an unjustified invasion of personal privacy under section 21(1) of the *Freedom of Information and Protection of Privacy Act.* The appellant appealed the ministry's decision and also claimed that additional records should exist. The adjudicator upholds the ministry's decision to withhold portions of the records and finds that it conducted a reasonable search.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 21(1), 21(2)(a), 21(2)(b), 21(2)(d) and 24.

OVERVIEW:

[1] The Ministry of Labour, Immigration, Training and Skills Development (the ministry or MLTSD) received a request under the the *Freedom of Information and Protection of Privacy Act* (the *Act*) for:

> the copy of report of carbon monoxide leakage event that had occurred on November 25th, 2020 in my workplace [name of workplace and address].

[2] The ministry conducted a search for responsive records and located an email

attaching a field visit report and handwritten notes prepared by a ministry health and safety inspector (inspector). The ministry disclosed the field visit report to the appellant but withheld an email address of the recipient of an email sent by the inspector. The ministry claimed that disclosure of the email address would constitute an unjustified invasion of personal privacy under section 21(1). The ministry also withheld portions of the inspector's handwritten notes claiming that they did not respond to the request.

[3] The appellant appealed the decision to the Information and Privacy Commission of Ontario (IPC). In her appeal form, the appellant questions whether the field visit report she received from the ministry is accurate or authentic given that she was provided an unsigned copy of the report.

[4] A mediator was assigned to the appeal to explore mediation with the parties. The appellant told the mediator that additional records responsive to her request should exist. In response, the ministry conducted an additional search but reported that no further records could be located. At the end of mediation, the appellant confirmed that she continues to seek access to the withheld information in the records. The appellant also continued to assert that additional records should exist.

[5] As no further mediation was possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. I am the adjudicator assigned to the appeal and I decided to commence an inquiry by sending a Notice of Inquiry to the appellant and invited her written representations.

[6] The appellant provided written representations in response. After reviewing the appellant's representations, I determined that I did not need to also solicit the ministry's representations.

[7] For the reasons set out below, I uphold the ministry's decision to withhold portions of the records disclosed to the appellant and find that it conducted a reasonable search.

RECORDS:

[8] The information at issue is the withheld information in an email and the withheld notations on pages 100, 101, 106 and 107 of the inspector's notebook.[1]

[1] The ministry provided pages 100-107 of the inspector's notebook to the IPC and pages 102, 103, 104 and 105 are blank.

PRELIMINARY ISSUE:

The IPC does not have the authority to address issues the appellant raised about the conduct of her employer and the inspector

[9] The appellant says that a carbon monoxide leak at her workplace was detected by accident when a customer who was carrying a carbon monoxide monitor went off. The appellant said that the customer was an inspector employed by the ministry. The appellant said that the inspector told her and everyone else in the premise to evacuate and wait for the fire department and EMS to arrive. The appellant says that the firefighters found that a furnace was the source of the leak. The appellant also said that EMS evaluated her and she was told that she had multiple symptoms and should follow up with her family doctor. The appellant in her representations provided details of the type of symptoms she experienced before and after the leak was detected.

[10] The appellant says that her direct questions to her employer about when and how often the furnace was serviced was not answered satisfactorily. The appellant also says that no carbon monoxide detector was installed while she worked at the premise.

[11] The appellant says her employer had an obligation to post the field visit report in a conspicuous area in the workplace and report the incident to WSIB. The appellant says that the employer failed to do these things. The appellant also says that the copy of the field visit report disclosed to her was not signed by the inspector. The appellant says the following in her representations:

> As a member of the public and also as a victim of gross negligence I have [the] right to expect that spending and conduct is in line with established policies and procedures with this government institution.
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> That being said [the] public has a right to expect that [the] conduct of public employees is not lacking objectivity, integrity and impartiality.
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> I believe that providing [the] employer with [an] unsigned, undated Field Report in the manner it was provided is incompatible with responsibilities and duties of [a] MLTSD inspector and calls for potential, actual or perceived conflict of interest.
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> This field report is not signed by [the] MLTSD inspector nor by employer/owner. It is not dated [and] was not posted in my workplace.
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> I do not believe that providing my former employer with [the] field report by … email is in line with MLTSD internal procedures. Transparency is absent.

[12] The copy of the report provided to the IPC is also not signed. I note that the bottom of the report is pre-populated with the inspector's name, title and contact

information. However, it is not within the IPC's jurisdiction to investigate the conduct of the inspector or determine whether the inspector's actions was in contravention of their professional obligations or the ministry's policies.

[13] My jurisdiction is limited to determining whether or not the ministry's response to the appellant's request for records is in accordance with the *Act*. Accordingly, below I will consider the appellant's concerns about the conduct of the inspector in the context of her position that factors weighing in favour of disclosure of the withheld information apply to the circumstances of this appeal.[2]

[14] No further mention of the issues considered under this heading will be addressed in this order as I do not have the jurisdiction to review the conduct or actions of the inspector or the appellant's employer.

ISSUES:

A. Is the information withheld from the inspector's notes responsive to the appellant's request?

B. Did the ministry conduct a reasonable search for records?

C. Does the mandatory personal privacy exemption at section 21(1) apply to the recipient's email address withheld in the email?

DISCUSSION:

Issue A: Is the information withheld from the inspector's notes responsive to the appellant's request?

[15] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

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[2] As will be discussed below, section 21(2) lists a number of factors weighing for and against disclosure of personal information at issue in an appeal. The appellant submits that the factors weighing against disclosure at section 21(2)(a), (b) and (d) apply. These sections state:

> 21 (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,
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> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (b) access to the personal information may promote public health and safety;
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[16] To be considered responsive to the request, records must "reasonably relate" to the request.[3] Institutions should interpret requests generously, in order to best serve the purpose and spirit of the *Act*. In this case, the appellant sought access to the "copy of report of carbon monoxide leakage event that had occurred on November 25th, 2020 in [her] workplace". In response to the request, the individual responsible for coordinating the ministry's search sent a request to the program areas which resulted in three records being located.[4] One of the records located was the inspector's notebook which the appellant was provided partial access to. In its decision letter, the ministry states that "[p]ortions of the inspector's notes have been removed and marked as non-responsive. This information relates to other investigations and not to the incident of November 25, 2020."

[17] The appellant says that the withheld information in the inspector's notebook should be disclosed to her.

[18] The ministry provided an unredacted copy of the inspector's notes to the IPC which I compared with the copy disclosed to the appellant. Based on my review, I am satisfied that the withheld portions of the inspector's notes relate to other matters not related to the incident identified in the appellant's request. Accordingly, I find that these portions of the notes do not reasonably relate to the appellant's request.

[19] As a result, I uphold the ministry's decision to withhold these portions of the notes from the appellant.

Issue B: Did the ministry conduct a reasonable search for records?

[20] The appellant says in her representations that the ministry failed to conduct a reasonable search for the signed copy of the field report. I also note that during

[3] Orders P-880 and PO-2661.
[4] The three records located by the ministry are a field report, an email and the inspector's notebook.

mediation, the appellant appeared to take the position that additional notes or records should exist which would document the symptoms she experienced as a result of the carbon monoxide leak.

[21] I have reviewed the file contents and note that the individual responsible for coordinating the search for the ministry reported that two program assistants searched the program areas' document storage locations twice. In addition, one of the program assistants checked the company's file and any surrounding files in case a signed copy of the report had been misfiled but neither a signed copy of the report nor other records not already identified by the ministry were located. During mediation the ministry confirmed it conducted a further search for records to see if a signed copy of the report could be located but a copy was not found.

[22] The appellant suggests in her representations that the ministry's explanation of its search confirms that it has now lost the unsigned copy of the field report it granted her partial access to.[5]

Decision and analysis

The appellant's evidence fails to establish a reasonable basis that additional records other than a signed copy of the field visit report may exist

[23] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.[6] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[24] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[7] As noted above, the copy of the field visit report disclosed to the appellant has a spot for the inspector to sign the report. Accordingly, in my view the appellant has a reasonable basis to conclude that a signed copy of the field report exists. However, I am not satisfied that the remainder of the appellant's evidence demonstrates that other records should exist, such as information she said she provided the inspector about her symptoms. I do not question the appellant's veracity that she told the inspector that she was experiencing symptoms. However, her recollection of telling the inspector she experienced symptoms does not establish a reasonable basis to conclude that the inspector took notes documenting her medical condition. Perhaps the appellant takes the position that the inspector should have taken notes of her medical condition. However,

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[5] The appellant states in her representations "[a]fter I received unsigned, undated Field Report in September 2021, [the] ministry could not locate even this unsigned and undated Field Report in a document storage location in September 2022."
[6] Orders P-85, P-221 and PO-1954-I.
[7] Order MO-2246.

the appellant's perception of what the inspector should have recorded in her notes is not sufficient to establish a reasonable basis to conclude that information regarding her medical condition should exist in the ministry's records holdings.

The ministry's evidence establishes that it made a reasonable effort to locate a signed copy of the field visit report

[25] The *Act* does not require the institution to prove with certainty that further records do not exist.[8] Instead, the ministry must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[9] that is, records that are "reasonably related" to the request.[10]

[26] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[11] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[12]

[27] Based on my review of the evidence set out above, I am satisfied that the ministry's evidence demonstrates that it made a reasonable effort to locate a signed copy of the field visit report. I am satisfied that the ministry's searches were conducted by an experienced employee knowledgeable in the subject matter of the request and that reasonable efforts to locate a signed copy were made. The ministry searched various locations for the requested record and conducted a further search during mediation. In addition, I note that the ministry's search actually identified additional records than identified in the request, such as the email and the inspector's notes, which were disclosed in part to the appellant.

[28] I have no comment regarding the appellant's allegation that the ministry has now lost its copy of the field visit report other than to confirm that the ministry provided the IPC with a copy of the report it disclosed to her.

[29] Having regard to the above, I find that the ministry's search for responsive records in response to the appellant's request was reasonable.

Issue C: Does the mandatory personal privacy exemption at section 21(1) apply to the recipient's email address withheld in the email?

[30] In its decision letter, the ministry says that "[i]t was necessary to sever the email address of one individual pursuant to the personal privacy provisions in section 21."

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[8] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.
[9] Orders P-624 and PO-2559.
[10] Order PO-2554.
[11] Orders M-909, PO-2469 and PO-2592.
[12] Order MO-2185.

[31] For section 21(1) to apply, the email must contain the personal information of an individual. Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.[13]

[32] I have reviewed the information in question and confirm that it is a personal email address. Accordingly, I am satisfied that the email address constitutes the "personal information" of an identifiable individual as defined in paragraph (d) of section 2(1).[14]

[33] Section 21(1) creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[34] If any of the five exceptions covered in sections 21(1)(a) to (f) exist, the institution must disclose the information. The parties have not claimed that any of the exceptions in sections 21(1)(a) to (e) apply in the circumstances of this appeal and I am satisfied that none apply.

[35] The section 21(1)(f) exception requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 21 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.

[36] Section 21(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.[15]Some of the factors weigh in favour of disclosure, while others weigh against disclosure. If no factors favouring disclosure are present, the section 21(1) exemption — the general rule that personal information should not be disclosed — applies because the exception in section 21(1)(f) has not been proven.[16]

[37] The appellant says that the factors weighing favour of disclosure at sections 21(2)(a), 21(2)(b) and 21(2)(d) apply in the circumstances of this appeal. These sections read:

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[13] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[14] Section 2(1)(d) of the *Act* states "personal information" means recorded information about an identifiable individual, including, the address, telephone number, fingerprints or blood type of the individual.
[15] Order P-239.
[16] Orders PO-2267 and PO-2733.

> 21(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,
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> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (b) access to the personal information may promote public health and safety;
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

Decision and analysis

Section 21(2)(a) does not apply

[38] As set out earlier in this order, the appellant alleges that the inspector failed to follow established policies in sending a copy of the field visit report to the employer by email. In support of her position that the factor at section 21(2)(a) applies, the appellant says that members of the public are entitled to be assured that "spending and conduct is in line" with the ministry's established policies and procedures. The appellant also says that her employer failed to post the field visit report at her workplace.

[39] This section supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[17] It promotes transparency of government actions.

[40] The public has a right to expect that spending by employees of government institutions when performing their employment-related responsibilities is in line with established policies and procedures.[18] In addition, institutions should consider the broader interests of public accountability when considering whether disclosure is "desirable" or appropriate to allow for public scrutiny of its activities.[19]

[41] I have considered the appellant's evidence and am not satisfied that disclosure of the withheld email address would shed light on any of the issues identified by the appellant. In my view, disclosing the personal email address at issue would not subject the activities of the ministry to public scrutiny. Accordingly, I find that this factor does not apply.

Section 21(2)(b) does not apply

[42] The appellant says that the factor weighing in favour of disclosure at section

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[17] Order P-1134.
[18] Orders P-256 and PO-2536.
[19] Order P-256.

21(2)(b) applies because she does not believe that the ministry's policies were followed. In support of this position, the appellant states "[i]t is crucial for public health and safety that employment-related responsibilities of employees … is in line with established policies and procedures."

[43] The purpose of section 21(2)(b) is to permit disclosure of potentially significant information affecting the health or safety of an individual.[20]

[44] In my view, the appellant's concerns about the inspector's decision to send a copy of the field visit report by email does not give rise to compelling circumstances affecting the health and safety of an individual. Accordingly, I find that this factor does not apply.

Section 21(2)(d) does not apply

[45] This section weighs in favour of allowing requesters to obtain someone else's personal information where the information is needed to allow them to participate in a court or tribunal process. The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?

2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?

3. Is the personal information significant to the determination of the right in question?

4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?[21]

[46] The appellant says that she filed a WSIB claim and that the inspector "declined discussion" with her lawyer "in charge of [her] claim about carbon monoxide leakage". The appellant reiterates that her employer failed to report the incident to WSIB and that "it was in his financial interest to obtain the field visit report in the form he did."

[47] I have considered the appellant's evidence and accept that she is contemplating or has taken legal action against the inspector, the ministry or her employer. I accept that the right in question being pursued by the appellant relates to a question of law. I am also satisfied that the right is related to a legal proceeding that is ongoing or contemplated. Accordingly, I find that parts 1 and 2 of the test have been met.

[48] However, all four parts of the test must be met for section 21(2)(d) to apply and

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[20] Order PO-2541.
[21] See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

I find that parts 3 and 4 of the test have not been met. Part 3 of the test requires that the personal information at issue be significant to the determination of the right in question. Part 4 of the test requires the appellant to establish that the personal information issue is required in order to prepare for the proceeding or ensure an impartial hearing.

[49] The personal information at issue here is a personal email address. In my view, disclosure of the email address is not significant to the determination of the legal right in question. Disclosure of the personal email address would not assist the court or tribunal to assess the type of compensation being sought by the complainant given her alleged medical complications as a result of being exposed to carbon monoxide.

[50] I am also not satisfied that the appellant's evidence establishes that the email address in question is required for her to prepare for a proceeding or to ensure an impartial hearing. In my view, there is no connection between the withheld email address and the problems the appellant described her lawyer having in speaking with the inspector. I note that the field visit report disclosed to the appellant clearly sets out the name, address and contact information of the employer and inspector.

[51] As all four parts of the test in section 21(2)(d) have not been met, I find that section 21(2)(d) does not apply.

Summary

[52] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions. Section 21(f) allows the ministry to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy."

[53] I reject the appellant's claim that the factors weighing in favour of disclosure under sections 21(2)(a), (b) and (d) apply in the circumstances of this appeal. As no factors weighing in favour of disclosure have been established, I find that the section 21(f) exception does not apply and the email address is exempt from disclosure under section 21(1).

[54] Accordingly, I uphold the ministry's decision to withhold the email address in question and dismiss the appeal.

ORDER:

1. I uphold the ministry's access decision.

2. I find the ministry conducted a reasonable search for responsive records.

Original Signed by: November 13, 2024

Jennifer James
Adjudicator