



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

ORDER P-238

Appeal P-900364

Ministry of the Solicitor General



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ORDER

On July 8, 1991, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

BACKGROUND:

On April 20, 1990, a request was made to the Ministry of the Solicitor General (the "institution") requesting access to:

All information accumulated between July 7, 1988 and February 24, 1989, regarding my application for the position of O.P.P. constable. [File number quoted]. Please include results of all testing, interviews, background investigation and final review board decision.

Any information gathered about myself, my work history, family history and the source of the information should be included.

The requester was an unsuccessful applicant for employment as a uniform member of the Ontario Provincial Police (the "O.P.P."). The application process for that agency includes a background investigation into areas such as academics, financial history and employment history. The results of the investigation and various tests scores are assessed and a determination is made as to the applicant's suitability as an O.P.P. recruit.

The record which was identified by the institution as responding to the appellant's request contained, among other things, information which was provided by persons whose interests could

be affected by the disclosure of the record. The institution notified these persons and, after considering their submissions, granted partial access to the requested information. Access was denied to the balance of the information contained in the record pursuant to sections 49(a), (b) and (c) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

The requester appealed the institution's decision. Notice of the appeal was given to the institution and the appellant. The Appeals Officer obtained and reviewed the record.

During the course of mediation, the scope of the appeal was narrowed to the following two portions of the record:

- 1) The results of a background investigation into the appellant's employment history conducted by the Ontario Provincial Police. The relevant portions relate to interviews conducted with previous employers who are not consenting to the release of the information. ("Severance 1"). This information is found on page FI0099 of the record.
- 2) A one sentence summary of the results of the background investigation. ("Severance 2"). This information contains reference to the appellant's current and past employers and is found on page FI0084 of the record.

As a result of the narrowing of the appeal, only the section 49(c) exemption remains at issue.

Notice that an inquiry was being conducted to review the institution's decision was sent to the appellant, the institution and to those of the appellant's previous employers who had not consented to the release of the information at issue (the "affected parties"). An Appeals Officer's Report, which is intended to assist the parties in making any representations to the Commissioner concerning the subject matter of the appeal, accompanied the Notice of Inquiry.

Written representations were received from the appellant, the institution and the affected parties. I have considered these representations in making this Order.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the portions of the record at issue qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is in the affirmative, whether the portions of the record at issue fall within the discretionary exemption provided by section 49(c) of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the portions of the record at issue qualifies as "personal information" as defined in section 2(1) of the Act.

In all cases where the request involves access to personal information, it is my responsibility, before deciding whether

the exemptions claimed by the institution apply, to ensure that the information in question falls within the definition of "personal information" found in section 2(1) of the Act. Subparagraph (g) of that definition reads:

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

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

It is my view that both Severances 1 and 2 contain the views and opinions of the individuals interviewed, about the appellant, in the context of the appellant's past and potential employment. I am therefore satisfied that the information is properly considered to be the personal information of the appellant.

ISSUE B: If the answer to Issue A is in the affirmative, whether the portions of the record at issue fall within the discretionary exemption provided by section 49(c) of the Act.

Section 47(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of an institution. However, this right of access under section 47(1) is not absolute; section 49 provides a number of exemptions to this general right of access to personal information by the individual to whom it relates.

Section 53 of the Act provides that the burden of proof that a record, or a part thereof, falls within one of the specified exemptions in the Act lies with the head of the institution.

I have found under Issue A that the information at issue qualifies as "personal information" under the Act. I must now determine if access to this information could be denied on the basis that it falls within the exemption provided by section 49(c).

Section 49(c) of the Act reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits where the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;

The appellant has submitted that as the information at issue pertains solely to him, he has a right to know the content and the source of that information. He believes that the information not disclosed has had a negative effect on his career goals and he feels unable to rectify this situation not knowing the content of that information.

In Order 157 dated March 29, 1990, former Commissioner Sidney B. Linden considered section 49(c) of the Act. At page 17 he stated:

To qualify for exemption under subsection 49(c), the personal information contained in a record must satisfy each part of a three-part test:

1. The personal information must be evaluative or opinion material;
2. The personal information must be compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits;
3. Disclosure of the personal information would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence.

...

To qualify for exemption each part of the test must be satisfied. Failure to satisfy a single part of the test means that the personal information contained in the record cannot be exempted pursuant to subsection 49(c).

I adopt Commissioner Linden's views for the purpose of this appeal.

In referring to the first part of the test, Commissioner Linden went on to state:

In my view, the words "evaluative" and "opinion" connote a personal or subjective interpretation of an objective set of facts or circumstances.

The severances at issue contain the opinions of past and present employers with respect to the appellant in the context of his employment suitability.

In my view, both Severance 1 and Severance 2 contain personal information which is evaluative or opinion material and I find that the first part of the test is satisfied.

The complete record, including the severances at issue, is a direct result of an application by the appellant for employment with the O.P.P. Severances 1 and 2 contain information relating to interviews conducted by the O.P.P. with a view to aiding in an assessment of the appellant as an applicant. The institution submitted that the entire record, including Severance 1 and Severance 2, was compiled for the sole purpose of determining the appellant's suitability for employment with the O.P.P.

I accept the institution's submission and I am satisfied that the second part of the test has been met.

With respect to the issue of whether disclosure of the personal information would reveal the identity of a confidential source, the affected parties have submitted, both to the institution and in their representations during the appeal, that their

identities and the information provided by them to the O.P.P. were to be held in confidence. They further indicated that they provided the information believing that it would remain confidential.

Based on the circumstances surrounding the collection of the appellant's personal information, it is my view that the information was furnished to the institution in circumstances where it may have reasonably been assumed by the sources that their identities would be held in confidence. I find that the third part of the test is satisfied.

As I have found that all three parts of the test have been met, it is my view that the information at issue is exempt from disclosure pursuant to section 49(c) of the Act.

Further, it is my view that Severance 1 and Severance 2 cannot be further severed without revealing the identities of the sources who furnished the information to the institution.

Section 49(c) of the Act provides the head with the discretion to disclose personal information even if it meets the test for an exemption. In the circumstances of this appeal, I find nothing improper in the way in which the head has exercised his discretion, and I would not alter it on appeal.

ORDER:

I uphold the head's decision.

Original signed by: _____
Tom Mitchinson

August 19, 1991
Date

Assistant Commissioner