



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

ORDER 11

Appeal 880022

Ministry of Skills Development



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Appeal Number 880022

O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal to the Commissioner any decision of a head under the Act.

The facts of this case and the procedures employed in making this Order are as follows:

1. On January 29, 1988, the Ministry of Skills Development (the "institution") received a request from the appellant for access to Job Competition File SD4096 including applications and resumes of interviewed candidates, criteria and rating sheets, interview schedules and correspondence, and the qualifications of the successful candidate.

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2. On February 23, 1988, the institution granted partial access to this file and sent the appellant copies of:
 - (a) Screening criteria and rating sheets with areas pertaining to the Appellant and the successful candidate highlighted to provide the qualifications of the successful candidate;
 - (b) First and second interview schedules with all names but that of the successful candidate severed pursuant to subsection 21(1)(f) of the Act;
 - (c) Selection criteria, questions and ranking for first interview with severance of all names except that of the successful candidate pursuant to subsection 21(1)(f) of the Act;
 - (d) The letter to the unsuccessful candidates with names severed pursuant to subsection 21(1)(f) of the Act;
 - (e) The letter to the successful candidate with address severed pursuant to subsection 21(1)(f) of the Act.

Access to applications and resumes of all candidates was denied pursuant to subsections 21(1)(f) and 21(3)(d) of the Act.

3. On February 26, 1988, the requester appealed the denial of access to the applications and resumes of other candidates (the "records"). I gave notice of the appeal to the institution.

4. Between March 2, 1988 and May 2, 1988, efforts were made by an Appeals Officer to settle the appeal. The appellant clarified the reasons for his request, explaining that he did not seek to discover the identity of other candidates, but only the qualifications of those interviewed in order to determine how their qualifications were better than his, and thus why he did not get an interview. The institution offered to review with the Appellant his application if that might assist him in future job competitions; however, the institution maintained the position that release of the records was an unjustified invasion of personal privacy. The appellant declined the institution's offer, and settlement was not effected.

5. On May 2, 1988, I sent notice to the institution and the appellant that I was conducting an inquiry to review the decision of the head.
6. Written submissions were received from the appellant and the institution by June 10, 1988.

The issues arising in this appeal are as follows:

- A. Whether information contained in the records is personal information pursuant to sections 2 and 21 of the Act.
- B. If Issue A is decided in the affirmative, whether disclosure of the records to any person other than the individuals to whom the information relates can be presumed to be an unjustified invasion of personal privacy.
- C. If Issue B is decided in the affirmative, whether any provisions of the Act apply to rebut this presumption.

It should be noted at the outset that the purposes of the Act are set out in section 1. Subsection 1(a) provides a right of access to information under the control of institutions in

accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter_balancing privacy protection purpose of the Act. The subsection provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide individuals with a right of access to their own personal information.

It should also be noted that section 53 of the Act provides that the burden of proof that the record or part of the record falls within one of the specified exemptions of the Act lies upon the head.

The records at issue in this appeal are signed letters of application for a position with the institution, each accompanied by a resume of the applicant's educational background and employment history. The records vary in additional details such as membership in associations, language skills, accomplishments and other interests. They also vary in their descriptions of previous positions held and the way in which each candidate addresses the applicability of his or her

qualifications to the position sought. There is no uniform format or style.

ISSUE A: Whether information contained in the records is personal information pursuant to sections 2 and 21 of the Act.

Subsection 21(1) of the Act has been relied upon by the institution to deny disclosure of the records in Job Competition File SD4096. The subsection reads:

21.(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates...

The subsection goes on to provide a number of exceptions to the rule of non_disclosure of this type of information. Specifically, subsection 21(1)(f) indicates that there may be an exception to non_disclosure if "disclosure does not constitute an unjustified invasion of personal privacy."

In its letter responding to the appellant's access request, the institution relied upon subsection 21(1)(f) in refusing disclosure of the records. Reliance on this subsection to

prevent disclosure may be somewhat confusing to requesters as the wording of the subsection reads as an exception to non_disclosure. While a head must undertake the process of deciding whether or not disclosure will cause an unjustified invasion of personal privacy, subsection 21(1)(f) does not provide an exemption upon which a decision not to disclose can be based.

In deciding whether the information contained in the records constitutes "personal information" as defined in the Act, reference should be made to subsection 2(1) of the Act. This subsection provides a definition which reads:

"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 an 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 where 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;

It is clear from the wording of the statute that the list of examples of personal information under subsection 2(1) is not exhaustive. This leaves it open for me to decide whether or not information contained in the records which does not fall under subsections (a) to (h), set out above, constitutes personal information.

In reviewing the records, I find that the names, addresses, employment history, educational history, etc. contained therein is personal information. As such, pursuant to the mandatory subsection 21(1) of the Act, the head of the institution is compelled to refuse disclosure unless one of the statutory exceptions to that general rule applies.

ISSUE B: If Issue A is decided in the affirmative, whether disclosure of the records to any person other than the individuals to whom the information relates can be presumed to be an unjustified invasion of personal privacy.

As indicated under Issue A, above, subsection 21(1)(f) of the Act allows a head to disclose personal information to a person other than the individual to whom the information relates if the disclosure does not constitute an unjustified invasion of personal privacy.

The clauses listed under subsection 21(3) of the Act describe a number of situations in which disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy. The institution submits that since subsection 21(3)(d) states that disclosure of information that "relates to employment or educational history" is presumed to constitute an unjustified invasion of personal privacy, the refusal to disclose the records at issue is justified.

I agree with the institution's position that the disclosure of the information contained in these resumes, including information relating to employment or educational history, would be presumed to be an unjustified invasion of personal privacy.

ISSUE C: If Issue B is decided in the affirmative, whether any provisions of the Act apply to rebut this presumption.

Once it has been determined that there exists a presumption that disclosure of the information contained in the records would constitute an unjustified invasion of personal privacy, it is necessary to determine whether any provisions of the Act apply to rebut this presumption.

Subsection 21(4) of the Act provides limitations on the presumptions set out in subsection 21(3) of the Act. The subsection reads:

21 (4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

(a) discloses the classification, salary range and benefits, or employment responsibilities of an

individual who is or was an officer or employee of an institution or a member of the staff of a minister;

- (b) discloses financial or other details of a contract for personal services between an individual and an institution; or
- (c) discloses details of a license or permit or a similar discretionary financial benefits conferred on an individual by an institution or a head under circumstances where,
 - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and
 - (ii) the value of the benefit to the individual represents 1 per cent or more of the value of similar benefits provided to other persons and organizations in Ontario.

As the information contained in the records in issue does not fall within one of the three situations set out above, I find that subsection 21(4) of the Act does not operate to rebut the presumption of an unjustified invasion of personal privacy in this case.

Subsection 21(2) of the Act provides some criteria which, if relevant, may be considered in determining if the presumed invasion under subsection 21(3) is rebutted in this case. Having reviewed the criteria set out in subsection 21(2), I find that none of the factors mentioned therein outweigh the presumed unjustified invasion of personal privacy.

In conclusion, I find that the presumption of an unjustified invasion of personal privacy in this case 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.

Original signed by:
Sidney B. Linden
Commissioner

August 3, 1988
Date