



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

# **ORDER P-230**

**Appeal 900269**

**Ministry of Housing**



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## O R D E R

### INTRODUCTION :

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act"), which gives a person who has made a request for access to a record under subsection 24(1), or to personal information under subsection 48(1), a right to appeal any decision of a head of an institution to the Information and Privacy Commissioner.

On April 5, 1990, the appellant wrote to the Ministry of Housing (the "institution") requesting access to personal information found in personnel records as well as the following:

All personal information found in competition file #MH332, including copies of all questions asked and my responses including interviewers' comments and scores. Also include all information that can be released under the Act regarding the winning candidates, including scores.

On April 20, 1990, the institution provided access to all personnel records of the appellant as well as the appellant's personal information relating to job competition MH332 in which he was a candidate. The institution denied access to information concerning scores of other candidates in the competition under subsection 21(1) of the Act.

On May 3, 1990, the institution informed the appellant of the names, starting date and salary range of the two successful candidates and stated that the successful candidates were being given an opportunity to submit representations concerning disclosure of their scores. The two candidates refused to consent to the disclosure of their scores.

On May 10, 1990, the institution advised the appellant that it was denying access to the aggregate scores of the two successful candidates in the job competition.

On June 7, 1990, the appellant appealed the decision of the institution. Notice of this appeal was given to the institution, the appellant and the two successful candidates in the job competition (the "affected parties").

The record was received and reviewed by the Appeals Officer. During mediation of this appeal, the Appeals Officer contacted the affected parties to ascertain whether they would consent to the release of information. The affected parties stated that they would be willing to release a range within which their aggregate scores fell, on condition that the information be for the appellant's use only, and that he undertake not to disclose it to any other person. This position was conveyed to the appellant, who declined to settle on this basis.

On December 17, 1990, notice that an inquiry would be conducted was sent to the appellant, the institution and the affected parties. Enclosed with each notice letter was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the

appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. This report indicates that the parties, in making their representations, need not limit themselves to the questions set out in the report.

Representations were received from the institution and the affected parties. The appellant indicated that his representations were contained in his letter of appeal. I have reviewed and considered these representations in making this Order.

**PURPOSES OF THE ACT/BURDEN OF PROOF:**

The purposes of the Act as set out in section 1 should be noted at the outset. 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. This 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.

Further, 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.

**ISSUES/DISCUSSION:**

The information at issue in this appeal, the names and scores of the affected parties, is contained in records consisting of 6 pages of interviewers' notes. Each page lists the competition number, the name of the position for which the competition was held, the name of the candidate, the number of points scored, that is, the total score given by one interviewer for one candidate, the name of the interviewer, and the date, which is presumably the date of the interview.

The issues arising in this appeal are as follows:

- A. Whether the information contained in the records qualifies as "personal information" as defined in subsection 2(1) of the Act.
- B. If the answer to Issue A is in the affirmative, whether the head properly applied the mandatory exemption provided by subsection 21(1) of the Act.
- C. Whether the records can reasonably be severed under subsection 10(2) of the Act without disclosing information that falls under the exemption.

**ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined in subsection 2(1) of the Act.**

Before deciding whether an exemption under subsection 21(1) of the Act applies, I must determine whether the information in question falls within the definition of "personal information" in subsection 2(1) of the Act.

Subsection 2(1) provides the following definition:

In this Act,

"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 the 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;

In my view, the information at issue in this appeal, the names and scores of the affected parties, qualifies as personal information under subsection 2(1) of the Act.

**ISSUE B: If the answer to Issue A is in the affirmative, whether the head properly applied the mandatory exemption provided by subsection 21(1) of the Act.**

Once it has been determined that a record or part of a record contains personal information, subsection 21(1) of the Act prohibits disclosure of this information except in certain circumstances. One such circumstance is contained in subsection 21(1) (f) of the Act, which reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Guidance is provided in subsections 21(2) and (3) of the Act with respect to the determination of whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

Subsection 21(3) of the Act sets out a list of the types of personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In particular, subsection 21(3)(g) provides as follows:

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

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

I am of the opinion that the information in issue falls within the provisions of subsection 21(3)(g). Therefore, its disclosure would be presumed to constitute an unjustified invasion of personal privacy. Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy under subsection 21(3) have been satisfied, I must then



consider whether any other provisions of the Act come into play to rebut this presumption.

In Order 20 (Appeal Number 880075), dated October 7, 1988, Commissioner Linden stated that "... a combination of the circumstances set out in subsection 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view such a case would be extremely unusual." The appellant has not indicated that any such combination of circumstances under subsection 21(2) exists so as to rebut the presumption under subsection 21(3)(g), nor has he referred to any other relevant circumstances which should be considered in this case. In the circumstances, I conclude that the disclosure of the personal information would be an unjustified invasion of personal privacy.

**ISSUE C: Whether the records can reasonably be severed under subsection 10(2) of the Act without disclosing information that falls under the exemption.**

Subsection 10(2) of the Act states that:

Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

In applying subsection 10(2) to the information at issue in this appeal, it is necessary to determine whether severing personal identifiers will remove the remaining information from the scope of the definition of "personal information" under subsection 2(1).

The appellant's argument is that, in view of the fact that there were two winning candidates rather than one, the release of the two aggregate scores without any other personal identifiers would not enable him to identify which score belonged to which individual.

He contends that a score alone would not be personal information, as it is not recorded information about an identifiable individual. In effect, he is stating that by severing the names of the candidates from the record, the remaining information would not constitute personal information.

In Order 20, supra, part of the information requested by the appellant was the "rating of the successful candidate". In the circumstances of that appeal, the appellant knew the successful candidate personally and would have been able to identify the person to whom the information related even if the name had been severed from the record. Commissioner Linden found, at page 7, that ratings and test results obtained from a job competition constituted "recorded information about an identifiable individual."

In this appeal, the appellant has requested the aggregate total scores of "the two successful applicants". The nature of the request is essentially the same as that considered in Order 20, in spite of the fact that there are two successful candidates in this case, and only one in the former. In my view, any release

of information concerning these two persons would be tantamount to disclosing their names. The information at issue in this appeal relates to only two individuals, both of whom are known to the appellant. As such, the ability to identify which score belongs to which person is markedly increased.

I believe that provisions of the Act relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information. In this appeal, I am of the view that there is such a reasonable expectation and that the aggregate scores of the two successful candidates, fall within the definition of personal information under subsection 2(1).

Therefore, I conclude that the provisions of subsection 10(2) do not apply in the circumstances of this appeal.

**ORDER:**

I uphold the decision of the head.

Original signed by: \_\_\_\_\_  
Tom A. Wright  
Commissioner

\_\_\_\_\_ May 6, 1991  
Date