



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

ORDER 194

Appeal 890338

Ministry of Health



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O R D E R

INTRODUCTION:

On September 22, 1989, a request was received by the Ministry of Health (the "institution") under the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act"). The requester sought access to:

Any and all information about me including all evaluations done by co_workers and management at [the requester's work location]. All information about me in corporate files.

On October 24, 1989, the institution's Freedom of Information and Privacy Co_ordinator (the "Co_ordinator") wrote to the requester and advised that:

In response to your request for access to all information about yourself held by the [the requester's work location], I am pleased to inform you that disclosure has been granted under the Freedom of Information and Protection of Privacy Act, 1987.

A copy of the record is enclosed.

Some of the material requested has been severed from the record under the authority of one of the exemptions from disclosure provided for in the Act. Where material has been severed the legal authority is noted in the margin next to the information removed.

The exemptions used are: Section 13, disclosure would reveal advice or recommendations of a public servant: 21(1), 21(3)(a), personal information: and, 49(c), evaluative or opinion material compiled solely for the purpose of determining suitability/qualifications for employment.

By letter dated November 9, 1989, the requester appealed the decision of the head pursuant to subsection 50(1) of the Act. This subsection gives a person who has made a request for access to a record under subsection 24(1) or a request for access to personal

information under subsection 48(1) a right to appeal any decision of a head of an institution under the Act to the Commissioner.

The Appeals Officer assigned to this matter obtained and examined the 49 records at issue in this appeal.

As settlement of this appeal could not be effected, notice that an inquiry was being conducted to review the decision of the head was sent to the appellant and the institution on March 27, 1990. 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.

Written representations were received from both parties and I have considered them in arriving at my decision.

In its representations, the institution clarified that it was no longer relying on section 13 of the Act to deny access to the records or parts of records at issue in this appeal.

The institution also clarified that it was relying on subsection 49(b) of the Act in association with section 21 of the Act for each of the records or parts of records that remain in issue in this appeal.

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested records qualifies as "personal information" as defined by subsection 2(1) of the Act.
- B. If the answer to Issue A is in the affirmative, whether the exemption provided by subsection 49(b) of the Act applies in the circumstances of this appeal.
- C. If the answer to Issue A is in the affirmative, whether the exemption provided by subsection 49(c) of the Act applies in the circumstances of this appeal.

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 counterbalancing 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.

On January 5, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

BACKGROUND :

The appellant was employed as an ambulance attendant at one of the institution's district ambulance offices. During the course of her employment, she sustained several work related injuries which ultimately left her unable to perform the essential duties of her position. It is my understanding that discussions were then held between management of the district ambulance office, representatives of the Workers' Compensation Board, the appellant

and representatives of the appellant's Union, relating to the placement of the appellant in a position suitable to her physical restrictions.

These discussions resulted in an agreement whereby the appellant would undergo several weeks of training in the position of Radio Operator 2 Calltaker (ambulance dispatcher) to allow her the opportunity to acquire the skills needed in that position. At the end of the training period the appellant was to be advised as to whether she then possessed the necessary qualifications that would enable her to compete for a position as a Radio Operator 2 Calltaker.

The training period was structured so that the appellant worked with two other radio dispatchers on each of her scheduled shifts. The co_workers prepared a written review of her performance for each shift worked. These reviews were completed on one of two forms. The first form is not titled but sets out the skills and abilities required of a dispatcher. The second form is entitled "Ambulance Dispatchers Performance Appraisal".

The dispatchers working with the appellant completed these forms in their own writing. On several occasions, the forms were not used and instead, the records consist of either typed or handwritten notes only.

During mediation, the appellant advised the Appeals Officer that she was not interested in receiving personal information that did not relate to her but which is contained in the records. As the information severed from Records 1, 2, 3, 4, 49 was personal information that did not relate to the appellant, the appellant agreed that these records were not in issue in this appeal. When referring to the records at issue in this appeal, I have used the numbers assigned to them by the institution, for ease of reference.

Record 30 is a blank four page evaluation form containing a single handwritten comment and the first name of the author of that comment. This comment does not relate to the appellant whatsoever, and therefore I consider this record outside the scope of this appeal.

Records 21, 34, 39, 41 and 44 are Ambulance Dispatch forms containing, among other things, personal information about the

individuals to whom the ambulances were dispatched. The appellant advised that she was not seeking access to the personal information of these individuals.

The institution advised in its representations that it had located the records relating to the appellant's application for employment for the position of Radio Operator 2 Calltaker. The institution did not raise any objection to the release of these records and I therefore order their release to the appellant.

Finally, with respect to Record 27, the institution advised that it was no longer objecting to the release of this record. I therefore order that this record be released in its entirety to the appellant.

Therefore, there are 42 records (176 pages in total) at issue in this appeal. All of the records have been withheld in their entirety. Eighteen of the records can be described as evaluation reports with respect to the appellant's job performance (80 pages); 37 are "ambulance dispatchers performance appraisal" forms for the appellant (37 pages); 17 are notes, memoranda or Ambulance Dispatch Records (53 pages); and one is an orientation report. The records at issue in this appeal are Records 5-26, 28-29 and 31-48.

DISCUSSION:

ISSUE A: Whether the information contained in the requested records qualifies as "personal information" as defined by subsection 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" in subsection 2(1) of the Act. This definition reads, in part, as follows:

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

...

(e) the personal opinions or views of the individual except where they relate to another individual,

...

(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 its representations, the institution argued that each of the records in issue in this appeal contains personal information about the author of the record. Specifically, the institution relied on subsection 2(1)(h) of the Act to argue that the records contain the personal information of their author.

The institution submitted that:

Disclosure of the Records would consequently reveal the ambulance dispatchers' names, their handwriting, and their comments regarding the Appellant's job performance. This it is submitted would be an

unjustified invasion of the ambulance dispatchers' privacy.

...

...because the names of the ambulance dispatchers are known by the Appellant and since she worked with them and recognizes their writing, their handwritten notes are information of a personal nature. These notes, because they are handwritten, regardless of the content of the notes, are information of a personal nature which belong to the ambulance dispatchers. Disclosure of handwritten notes would consequently reveal "personal information" and it would be an unjustified invasion of the ambulance dispatchers' personal privacy.

I do not accept the institution's position. Subsection 2(1)(h) of the Act provides that "personal information" includes "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". The records in issue in this appeal contain the authors' handwritten comments and opinions about the appellant's work during a 14 week training period. The names of the authors in these records do not appear with other "personal information" relating to them.

To accept the institution's position would permit any individual to render any information their personal information by merely producing the information in his/her handwriting. I am unable to conceive of a situation in which handwriting alone could be categorized as "recorded information about an identifiable individual" (emphasis mine). In my view, what is revealed in the text of the handwritten record is the relevant consideration in deciding if any personal information exists in the record and to whom that personal information relates.

By looking at subsections (e) and (g) of the definition of "personal information" it is clear that individual A's recorded personal opinions or views about individual B constitutes the personal information of individual B only. All of the records at issue in this appeal contain the authors' opinions and comments about the appellant's work during her training period and therefore, these records contain only the personal information of the appellant and not the authors.

As the contents of the records contain only the appellant's personal information the release of the authors' name and their handwriting will not "reveal other personal information about" the authors.

As previously mentioned, the appellant is aware that Records 21, 34, 39, 41 and 44 contain personal information that relates to individuals to whom ambulances were dispatched. The personal information of these individuals contained in these records is not in issue in this appeal. Once these individuals' personal information is removed from these records, the balance is the personal information of the appellant only.

The only exception to my finding that the records in issue in this appeal contain only the personal information of the appellant, is with respect to record #35. At the bottom of page four of that record there are two paragraphs of handwritten comments. I find that the first of these two paragraphs contains personal information of two individuals other than the appellant. As the appellant has indicated all along that she is not interested in receiving information that does not relate to

her, I conclude that this paragraph is not in issue in this appeal.

ISSUE B: If the answer to Issue A is in the affirmative, whether the exemption provided by subsection 49(b) of the Act applies in the circumstances of this appeal.

As I have found that none of the records or parts of records that are in issue in this appeal contain personal information of individuals other than the appellant, subsection 49(b) of the Act cannot apply.

ISSUE C: If the answer to Issue A is in the affirmative, whether the exemption provided by subsection 49(c) of the Act applies in the circumstances of this appeal.

The institution has claimed the discretionary exemption provided by subsection 49(c) of the Act. Subsection 49(c) of the Act reads as follows:

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;

...

In Order 157 (Appeal Number 890173) dated March 29, 1990, Commissioner Sidney B. Linden considered subsection 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).

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

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

evaluative or opinion material would be test scores, ratings, and grades.

A review of the records at issue in this appeal leads me to conclude that they do contain personal information which is evaluative or opinion material such that the first part of the test is satisfied.

The representations of the institution indicate that the appellant "was receiving 14 weeks of instruction and on the job training to enable her to perform the job of an ambulance dispatcher." The institution indicated further that:

The purpose of the training period is to instruct an employee so that the skills necessary to perform the job may be acquired. All records were collected for the purposes of determining suitability, eligibility and qualifications for employment.

During this period, the co-workers training the appellant monitored her performance to determine if she was achieving the standards, objectives and targets set for the position. The opinions and evaluations of those training the appellant were recorded and provided to the appellant's supervisor. The appellant's supervisor prepared weekly evaluations based on his own observations and assessments as well as those of the appellant's co-workers.

The appellant attended a weekly appraisal interview where her supervisor would discuss the evaluation of the appellant's performance during the past week. She also received the information contained in the evaluations on a weekly basis, in typed form. At the conclusion of the training period, it was

determined that the appellant did not possess the required skills to perform the position in question.

As far as the second part of the subsection 49(c) test is concerned, even if I were to conclude that the records at issue in this appeal were compiled for the purpose of determining suitability, eligibility or qualifications for employment, I am unable to conclude that the records were compiled solely for that purpose. It is clear that the records were also compiled to enable the supervisor to inform the appellant of whether she was acquiring the skills of the position she was being trained for and to set out her shortcomings so that she could strive to improve in these areas during the balance of the training period. Therefore, it could not be said that the personal information was compiled solely for the purpose of determining suitability, eligibility or qualifications for employment. The second part of the test has not been satisfied and therefore, the exemption provided by subsection 49(c) of the Act does not apply to the records at issue in this appeal.

Having concluded that neither subsection 49(b) or 49(c) of the Act apply, my order in this appeal is as follows:

ORDER:

1. I order the head to disclose to the appellant a copy of the records relating to her application for employment for the position of Radio Operator 2 Calltaker.
2. I order the head to disclose Records 21, 34, 39, 41 and 44 to the appellant after the personal information of

individuals to whom ambulances were dispatched has been severed.

3. I order the head to disclose Record 35 to the appellant after severing the first paragraph of handwritten comments at the bottom of page 4.
4. I order the head to disclose Records 5-20, 22-29, 31-33, 36-38, 40, 42-43 and 45-48 to the appellant in their entirety.
5. I order the head to disclose the above-cited records to the appellant within 20 days following the date of this Order. I further order the head to advise me in writing within five (5) days of the date of disclosure, of the date on which disclosure was made. Said notice should be forwarded to the attention of Maureen Murphy, Registrar of Appeals, Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Tom A. Wright
Assistant Commissioner

August 29, 1990

Date