



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

# **ORDER P-578**

**Appeals P-9200648 and P-9200652**

**Ontario Labour Relations Board**



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# ORDER

## BACKGROUND:

The Ontario Labour Relations Board (the Board) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to "the complete file #0033-91-U". The Board located the requested Board hearing file and, pursuant to section 28 of the Act, notified two persons whose interests might be affected by the disclosure of the requested information. The affected persons objected to the release of the information in the file.

The Board then issued a decision granting the requester access to the entire file. The affected persons appealed the decision. The Commissioner's office opened Appeal P-9200648 to consider the appeal of one affected person (the Union appellant). Appeal P-9200652 was opened by the Commissioner's office to address the appeal of the second affected person (the individual appellant). Because the records at issue are the same, this order will dispose of both appeals.

During mediation of the appeals, the requester agreed to narrow the scope of his request by eliminating certain pages of the record from the request. Based on the Board's numbering, the pages remaining at issue are: Pages 1 - 14, 18 - 27 and 40 - 94.

Further mediation was not possible and notice that an inquiry was being conducted to review the decisions of the Board was sent to the requester, the appellants and the Board. Representations were received from the requester and the individual appellant.

While the representations were being considered, Commissioner Tom Wright issued Order M-170, which interpreted several statutory provisions of the Municipal Freedom of Information and Protection of Privacy Act in a way which differed from the interpretation developed in previous orders. Since a new approach to the operation of the Municipal Freedom of Information and Protection of Privacy Act was being adopted and because similar statutory provisions under the Act are at issue in the present appeals, it was determined that copies of Order M-170 should be provided to the parties. The parties were then afforded the opportunity to state whether the contents of Order M-170 would cause them to change or to supplement the representations which they had previously submitted. Additional representations were received from the requester only.

## THE RECORD:

The record is the Board file of a complaint filed by the individual appellant against the Union appellant pursuant to a section of the Labour Relations Act. It contains the Board's internal file management documents, exhibits filed for the hearing, the formal hearing record (including Notices of Hearing), the formal complaint and reply, the Board's decision and settlement documentation, documentation regarding the appointment of a Labour Relations Officer and correspondence.

The record also contains blank pages or copies of blank forms (pages 8 and 9) and pages which consist of nothing more than photocopies of envelopes for correspondence (pages 67, 72, 92 and 93). I find that these pages are not responsive to the request and should not be disclosed.

Where there are duplicate pages, the decision made for any page will apply to its duplicate. Pages 12, 13, 43, 44, 45, 46, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, and 65 are duplicated by pages 89, 86, 47, 48, 49, 50, 90, 91, 79, 80, 81, 84, 85, 87, 88, 77, and 66 respectively.

## **ISSUES:**

The issues arising in this appeal are:

- A. Whether the information contained in the record qualifies as "personal information", as defined by section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.
- C. Whether the mandatory exemption provided by section 17 of the Act applies.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in the record qualifies as "personal information", as defined by section 2(1) of the Act.**

Section 2(1) of the Act defines "personal information", in part as "... recorded information about an identifiable individual ...".

Having reviewed the pages at issue, I find that they all contain the personal information of the individual appellant as defined in section 2(1) of the Act. Page 5 also contains the personal information of another identifiable individual. Various pages of the record contain references to other named individuals. However, since these individuals were acting in their professional or employment capacity, I find that the information relating to them is not personal information (Orders 157, P-257, P-369, P-377 and P-427).

None of the pages at issue contain the personal information of the requester.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to the record.**

Under Issue A, I found that the record contains the personal information of individuals other than the requester. Section 21(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in the circumstances listed in sections 21(1)(a) through (f) of the Act.

In my view, the only exception to the mandatory exemption contained in section 21(1) of the Act which has potential application in the circumstances of this appeal is section 21(1)(f). This section reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 21(2), (3), and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

In his representations, the requester has not referred to any of the listed circumstances in section 21(2) of the Act which weigh in favour of disclosure. However, he has referred to certain other matters which he believes are relevant and which he maintains should be considered in weighing his right of access to the pages at issue.

He submits that, as he is a Union member, he should not be denied access to and should be informed about all Union matters. He further states, regarding the application of section 21 of the Act, that he does not feel there will be any negative consequences upon disclosure of the pages at issue due to his involvement with the matter. In my view, both of these submissions relate to the identity of the requester.

In Order M-96, former Assistant Commissioner Tom Mitchinson considered the issue of the identity of a requester in the context of section 14(2)(d) of the Municipal Freedom of Information and Protection of Privacy Act, the equivalent to section 21(2)(d) of the Act. He stated:

In my view, a requester's status cannot be a relevant factor in determining whether disclosure of personal information will constitute an unjustified invasion of personal privacy. Disclosure of a record under Part I of the Act is, in effect, disclosure to the world and not just to the requester, and I find that the status of the Federation, or the relationship of a Federation to its members [the individuals whose personal information was being requested], is not a relevant consideration.

I agree with this approach and adopt it for the purpose of this appeal.

In my view, the factors referred to by the requester which rely on his identity to support his position that the information at issue should be disclosed, are not relevant factors to consider in the circumstances of this appeal.

The representations which I received with from the individual appellant weigh in favour of finding that section 21(1)(f) does not apply. Having found that the information at issue qualifies as personal information, and in the absence of any evidence or argument weighing in favour of finding that disclosure of personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception in section 21(1)(f) does not apply.

Because of the manner in which I have disposed of Issues A and B, it is not necessary for me to consider Issue C.

**ORDER:**

I order the Board **not** to disclose the pages of the record at issue.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ November 17, 1993