



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-232**

## **Appeal M-9300093**

### **Toronto Hydro**



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# ORDER

## BACKGROUND:

A request was made to Toronto Hydro (Hydro) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to documents relating to Employment Vacancy C787. Hydro gave the requester access to records containing his personal information and containing general information pertaining to the job competition, but denied access to other records on the basis of the exemptions in sections 14(2)(d), (e), (f) and (h), and 14(3)(d) and (g) of the Act. The requester appealed Hydro's decision.

During mediation Hydro provided the requester with access to some additional records. Hydro also raised the application of section 38(c) of the Act. In addition, the parties disagreed as to the scope of the request. Further mediation was not successful, and notice that an inquiry was being conducted to review Hydro's decision was sent to the appellant and Hydro. Representations were received from both parties.

While these representations were being considered, Commissioner Tom Wright issued Order M-170, which interpreted several statutory provisions of the Act in a way which differed from the interpretation developed in previous orders. Since a new approach to the operation of the Act was being adopted and because the same statutory provisions are at issue in the present appeal, 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 supplement the representations which they had previously made. Additional representations were received from Hydro only.

Hydro did not address the application of section 38(c) of the Act in either of its representations. As this is a discretionary exemption, I will not consider it in this order.

## PRELIMINARY MATTER:

The parties disagree on the scope of the request.

The appellant's request stated:

I would like to request information/file for Vacancy C787 under the Freedom of Information Act.

The information I would like is the correspondence from the Manager (employee requisition) to the rejection/selection letters to every employee who showed an interest or applied for the above position, and any other files/letters that relate to the above vacancy.

Vacancy C787 was a new position within Hydro. The appellant submits that the request encompassed all documents pertaining to the creation of the new position as well as the documents pertaining to the competition which was held to fill it. Hydro submits that:

The scope of that request was for information regarding the recruitment of a candidate for a position from the Manager's requisition to the rejection/selection letters.

I have carefully considered the request, and I agree with the position expressed by Hydro. In my opinion the language of the request is clear. It is a request for documents pertaining to the competition to fill Vacancy C787, not for documents pertaining to the establishment of the new position the creation of which led to the competition being conducted. Therefore, this is not a situation in which Hydro was required to offer assistance to the appellant in reformulating his request (Order 13). In this regard, Hydro has fulfilled its statutory obligations under the Act.

I am of the view, therefore, that the records considered by Hydro, to which the appellant was either granted or denied access, were responsive to the request. The remainder of my order will address the issues as they pertain to these documents, which both parties agree were included in the request.

Accordingly, the records at issue in this appeal are the employment application forms and interview packages for each candidate other than the appellant, as well as the selection matrix forms prepared by each interviewer ranking the candidates with respect to the various evaluation criteria applied.

## **ISSUES:**

The issues arising in this appeal are:

- A. Whether any of the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.

## **SUBMISSIONS/CONCLUSIONS:**

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

Section 2(1) of the Act states, in part, as follows:

[IPC Order M-232/December 3, 1993]

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

...

(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,

...

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

...

I have carefully reviewed the records at issue and am of the view that they all contain personal information as defined in section 2(1) of the Act. This personal information relates to individuals other than the appellant.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.**

Under Issue A, I found that the records contain the personal information of individuals other than the appellant.

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in certain circumstances listed under the section.

In my view, the only exception to the section 14 mandatory exemption which has potential application in the circumstances of this appeal is section 14(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,

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

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. In Order M-170, Commissioner Tom Wright addressed the interrelationship between these sections of the Act in the following way:

... [W]here personal information falls within one of the presumptions found in section 14(3) of the Act, a combination of the circumstances set out in section 14(2) of the Act which weigh in favour of disclosure cannot collectively operate to rebut the presumption.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption.

I adopt this approach for the purposes of this order.

Hydro claims that sections 14(3)(d) and (g) of the Act are applicable in the circumstances of this appeal. These sections state:

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

- (d) relates to employment or educational history;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

Having reviewed the records, I am satisfied that the employment applications contain information that relates to employment or educational history in that they outline the details of past positions held and responsibilities assumed by the candidates, as well as their former education. In this respect, they are similar to resumes which have been determined by past orders of the Commissioner's office to fall within the section 14(3)(d) presumption (Orders 11, 49, 97, 99, 159 and P-222).

The interview packages consist of the other candidates' responses to the interview questions and the scores assigned to the responses by the interviewers. Consistent with past orders of the Commissioner's office, I am satisfied that the information contained in these records fall with the section 14(3)(g) presumption (Orders 20, 43, 97, 196 and 230).

I have considered section 14(4) of the Act and find that none of the personal information in the employment applications or interview packages falls within the ambit of this provision. In addition, the appellant has not claimed that the public interest override set out in section 16 of the Act applies.

In my opinion, the information contained in the selection matrix forms also satisfies the presumption contained in section 14(3)(g) of the Act. However, it is my view that the principle of severance as outlined in section 10(2) should be applied to these two records. The relationship between section 10(2) of the Act and records containing personal information as defined in section 2(1) was discussed in Order P-230 by Commissioner Tom Wright. He stated:

I believe that the provisions of the Act relating to the 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 section 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).

In the circumstances of this appeal, I believe that, once the names of the candidates other than the appellant are severed from this record, the remaining information will no longer relate to an "identifiable individual" and, accordingly, will not constitute "personal information" as defined in section 2(1) of the Act. Therefore, there can be no unjustified invasion of personal privacy in the disclosure of the balance of the information contained in the selection matrix forms.

In summary, I find that the disclosure of the employment applications and interview packages of the individuals other than the appellant would constitute an unjustified invasion of their personal privacy. Therefore, the mandatory exemption provided by section 14 of the Act applies to these records. The selection matrix forms should be disclosed in accordance with the highlighted copies I have provided to Hydro's Freedom of Information Co-ordinator with a copy of this order.

## **ORDER:**

1. I uphold the Hydro's decision not to disclose the employment applications and the interview packages of candidates other than the appellant.
2. I order Hydro to disclose the selection matrix forms to the appellant in accordance with the highlighted version that I have provided to the Freedom of Information Co-ordinator with a copy of this order. The highlighted portions of these records should **not** be disclosed.
3. In order to verify compliance with this order, I order Hydro to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2, **only** upon request.

Original signed by: \_\_\_\_\_

Anita Fineberg  
Inquiry Officer

December 3, 1993