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

ORDER P-595

Appeals P-9200385, P-9200386 and P-9300200

Ministry of Housing

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

ORDER

BACKGROUND:

The Ministry of Housing (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information concerning the requester in the custody or under the control of the Ministry or of any "organization that the Ministry is responsible for". The requester indicated that he was specifically interested in accessing his personal information held by the Metro Toronto Housing Authority (the MTHA). The requester also asked to be provided with information concerning the "retention and disposal standards" for the requested records.

The Ministry acknowledged the request and informed the requester that it would be processed as two separate files: one for the Ministry and one for the MTHA. The Ministry granted the requester partial access to the records originating from the Ministry. Portions of the records were withheld from disclosure pursuant to sections 49(b), (c) and (d) of the Act. The Ministry informed the requester that his personal information files are retained for one year. He was subsequently advised that no records existed that were responsive to the request concerning the MTHA.

The requester appealed the decisions of the Ministry. The requester maintained that additional records exist, in both the Ministry and the MTHA, that are responsive to his requests, that the Ministry failed to provide him with a complete retention schedule, and that some records were illegible. He also indicated that he wished to obtain access to the records in their entirety. The Commissioner's office opened two separate appeal files to deal with these matters: P-9200385 (MTHA's file) and P-9200386 (Ministry's file).

The appellant subsequently submitted another request to the Ministry for very similar information as was the subject of the two aforementioned requests. The Ministry provided the appellant with full access to the requested records and indicated that it had already provided him with partial access to those records that had been included in his previous requests.

The appellant appealed, claiming that additional records exist that are responsive to this request. He again maintained that the Ministry failed to provide him with a complete retention schedule, and that some records were illegible. The Commissioner's office assigned Appeal Number P_9300200 to this file.

Mediation was not successful in any of the appeals. Because all three appeals involved the same or similar issues, one notice that an inquiry was being conducted to review the three decisions of the Ministry was sent to the appellant and the Ministry. Representations were received from the Ministry only.

With its representations the Ministry submitted a copy of the retention schedule in effect for the records responsive to the requests. A copy of this retention schedule should be provided to the appellant.

With respect to the appellant's concerns regarding illegible records, the Ministry indicated, in its representations, that it would be pleased to provide him with additional copies of the records or allow him to view those illegible if he so chooses. Despite being requested to do so, the appellant has not identified the specific records which he deems to be illegible. Accordingly, I will not address this issue further in this order.

In this order, I will consider the issues arising in all three appeals.

ISSUES:

A. Whether the information in the record of appeal file P-9200386 qualifies as "personal information" as defined in section 2(1) of the Act.

B. If the answer to Issue A is yes, whether the discretionary exemptions provided by sections 49(b), (c) or (d) of the Act apply.

C. Whether the Ministry's search for responsive records was reasonable in the circumstances of these appeals.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information in the record of appeal file P-9200386 qualifies as "personal information" as defined in section 2(1) of the Act.

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

> "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,

...

In my view, all of the information at issue in this record falls within the definition of "personal information" pursuant to section 2(1) of the Act, and relates **solely** to the appellant.

ISSUE B: If the answer to Issue A is yes, whether the discretionary exemptions provided by sections 49(b), (c) or (d) of the Act apply.

Sections 49(b), (c) and (d) of the Act all contain exceptions to an individual's right of access to his or her own personal information. These sections state:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy;
>
> (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;
>
> (d) that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual;

Section 49(b)

In Issue A, I found that the record contains only the personal information of the appellant. Therefore, disclosure of the record would not constitute an unjustified invasion of another individual's personal privacy. Accordingly, it is my view that section 49(b) of the Act has no application in the circumstances of this appeal.

Section 49(c)

In Order M-132, Assistant Commissioner Irwin Glasberg established what was, in effect, a four-part test for a record to qualify for exemption under section 38(c) of the Municipal Freedom of Information and Protection of Privacy Act, the equivalent of section 49(c) of the Act. For the exemption to be successfully claimed, an institution and/or the affected person must establish that:

1. The personal information is evaluative or opinion material;

2. The personal information was compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits;

3. The information was supplied to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;

4. The disclosure of the record would reveal the identity of the source of the information.

Each element of the four-part test must be satisfied in order for the exemption to apply. The failure to meet any part of the test means that section 49(c) will not be available to exempt the personal information contained in the record from disclosure.

The record at issue consists of a two-paragraph note written by a Ministry employee and used by the Application Review Committee of the Ministry to support their case for denying housing to the appellant.

I will first consider the third part of the test.

In Order M-132, Assistant Commissioner Glasberg stated that the following factors are relevant in determining whether the materials were supplied to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence:

1. The expectations of the provider of the opinion or evaluative material and the institution regarding the confidentiality of the provider's identity at the time that the information was supplied to the institution.

2. The ordinary practice and/or experience of the individual who provided the information and of the institution which sought the information with respect to maintaining the confidentiality of the source of the information.

3. The knowledge of the individual about whom the information relates as to the identity of the provider of the specific opinion or evaluative material and the individual's expectation as to whether the identity of the provider would be held in confidence.

4. The nature of the opinion or evaluative material, itself, insofar as it would identify the provider of the information.

With respect to the question of whether there existed a reasonable assumption that the identity of the source of the medical information would be held in confidence, the Ministry states;

> It is submitted that the information was supplied in confidence to the Ministry ... where the supplier of the information ... could reasonably assume that their [sic] confidentiality would be held in confidence [sic].

These representations are very general in nature and are merely a restatement of the exemption in the Act. The circumstances surrounding the provision and the receipt of this information from the named individual are very unclear. The Ministry indicates that the MTHA periodically requires the opinion of such individuals in order to aid in ensuring individuals are properly housed. However, I have been provided with no information as to what extent, if at all, expectations of confidentiality are ordinarily communicated between the Ministry and individuals who provide such information. Nor has any evidence been provided on whether assurances of confidentiality were either requested or actually provided to this particular individual.

In summary, I find that the Ministry has failed to provide me with sufficient evidence to indicate that, at the time the information was provided, it could reasonably have been assumed that the source would remain confidential. Thus the third part of the test has not been met.

Therefore, it is not necessary for me to consider the application of the other parts of the test. Because all elements of the four-part test have not been met, the Ministry cannot rely on the exemption set out in section 49(c) of the Act to withhold the record.

Section 49(d)

The phrase "could reasonably be expected to" is also found in section 14(1) of the Act. The exceptions to access set out in section 14(1) require that there exist a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the institution must establish a clear and direct linkage between the disclosure of the information and the harm alleged (Order M-202).

I believe this interpretation should also apply to the phrase as it is used in section 49(d) of the Act.

In my view, the Ministry has not established the linkage between the information contained in the record and the anticipated harm of prejudice to the mental or physical health of the appellant. I would also note that the information contained in the record is two years old. Accordingly, I find that the record does not qualify for exemption under section 49(d).

ISSUE C: Whether the Ministry's search for responsive records was reasonable in the circumstances of these appeals.

I have considered the searches undertaken by the Ministry of all the program areas in which responsive records may be located. This specifically includes the MTHA.

In its representations, the Ministry provided a description of the searches that were undertaken to locate records throughout the Ministry as well as an affidavit detailing the search undertaken by the MTHA. The description includes a summary from the Freedom of Information representatives indicating what files were searched and the fact that no responsive records were located.

Having reviewed the representations and other documentation submitted by the Ministry, I am satisfied that the Ministry has taken all reasonable steps to locate any responsive records, and I find that the search conducted by the Ministry was reasonable in the circumstances of these peals.

ORDER:

1. I order the Ministry to disclose the record to the appellant within 15 days from the date of this order.

2. I order the Ministry to provide the appellant with a copy of its retention schedule within 15 days from the date of this order.

3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the record and the retention schedule which are disclosed to the appellant pursuant to Provisions 1 and 2 of this order, **only** upon request.

4. I find that the Ministry's search for responsive records was reasonable in the circumstances.

Original signed by: December 3, 1993
Anita Fineberg
Inquiry Officer