



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

# **ORDER P-671**

**Appeal P-9300150**

**Management Board Secretariat**



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# ORDER

## BACKGROUND:

Management Board Secretariat (the Secretariat) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to an investigation conducted by the Secretariat with respect to a complaint filed by the requester. This investigation was carried out under the Workplace Discrimination and Harassment Prevention Policy, and involved two named individuals. More specifically, the requester sought access to "all interview notes, all records made regarding interviews, copies of all records obtained and copies of all documents in this particular file."

The Secretariat identified 45 records as being responsive to the request, granted access to some records and withheld those remaining, in whole or in part, pursuant to sections 13(1), 18(1)(g), 21 and 49(b) of the Act. The requester appealed the Secretariat's decision.

During mediation, the number of records at issue was reduced to six and the Secretariat withdrew its claim for exemption under sections 13(1) and 18(1)(g) of the Act. Further mediation was not successful and notice that an inquiry was being conducted to review the Secretariat's decision was sent to the Secretariat, the appellant and two affected persons. Representations were received from all parties.

The records at issue in this appeal are described in Appendix "A" attached to this order. The Secretariat has claimed the application of the exemption provided by section 49(b) of the Act to each of the records withheld.

## ISSUES:

- A. Whether 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, and the information relates to the appellant and other individuals, whether the discretionary exemption provided by section 49(b) of the Act applies to the personal information contained in the records.

## SUBMISSIONS/CONCLUSIONS:

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

Personal information is defined in section 2(1) of the Act, in part, to mean "recorded information about an identifiable individual, ...". The Secretariat submits that the portions withheld from the six records contain personal information.

The records are statements of various individuals taken in the course of an investigation into an allegation that the appellant had sexually harassed a co-worker. In my view, the information contained in the records constitutes the personal information of the appellant and other identifiable individuals.

**ISSUE B: If the answer to Issue A is yes, and the information relates to the appellant and other individuals, whether the discretionary exemption provided by section 49(b) of the Act applies to the personal information contained in the records.**

Under Issue A, I found that the records contain the personal information of the appellant and other identifiable individuals. Section 47(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. Section 49 provides a number of exemptions to this general right of access, one of which is found in section 49(b) of the Act. This provision states that:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 49(b) introduces a balancing principle. The Secretariat must look at the information and weigh the requester's right of access to his or her personal information against the rights of other individuals to the protection of their privacy. If the Secretariat determines that the release of the information would constitute an unjustified invasion of the personal privacy of other individuals, then section 49(b) gives the Secretariat the discretion to deny the requester access to the personal information.

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 whose disclosure is presumed to constitute an unjustified invasion of personal privacy. The Secretariat, in its representations, has not raised any of the presumptions contained in section 21(3) of the Act, nor have I found any of the presumptions to be relevant to this appeal. I also find that section 21(4) is not relevant to this appeal.

Section 21(2) provides a non-exhaustive list of criteria for the Secretariat to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. The Secretariat submits that sections 21(2)(f) and (h) apply to the information which was withheld from the records. These sections read:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

In its representations, the Secretariat explained its reasons for treating the personal information at issue as highly sensitive (section 21(2)(f)) and for believing that it was supplied by the individuals to whom it relates in confidence (section 21(2)(h)). Because of the nature of these representations, I am unable to describe them in any detail in this order.

One of the affected persons to the appeal submits that the disclosure of the personal information contained in the records will cause her to be exposed unfairly to certain enumerated harm. This is a consideration weighing in favour of privacy protection (section 21(2)(e)).

Following my review of the withheld information contained in the records and the representations of the parties, I agree that the information may be considered as "highly sensitive" within the meaning of section 21(2)(f) of the Act. In addition, I agree that in the circumstances of this investigation, the affected persons who provided statements did so with an expectation of confidentiality. Further, I agree that there exists a reasonable likelihood that the affected persons would be exposed unfairly to harm should the personal information contained in the records be disclosed.

A further consideration to be taken into account is the degree of disclosure the appellant has received in response to her request. Access was granted to all of the information contained in the records which related to the complaint and the later investigation. The appellant has not made any specific reference to any of the considerations enumerated in section 21(2) which favour the disclosure of the personal information. In my view, the factors present in favour of the privacy protection of the individuals named in the records outweigh the appellant's right of access to this information.

I have considered all of the circumstances arising in this appeal and find that, on balance, the disclosure of the personal information severed from the records at issue would constitute an unjustified invasion of the personal privacy of the affected persons.

Section 49(b) is a discretionary exemption. The Secretariat has provided me with representations regarding its exercise of discretion in favour of withholding the severed information. I have found nothing improper in the manner in which its discretion was exercised, and would not alter this determination on appeal.

**ORDER:**

I uphold the Secretariat's decision.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ May 4, 1994

## APPENDIX "A"

### RECORDS AT ISSUE

RECORD NUMBER	DESCRIPTION
1	Memorandum to the investigator dated March 5, 1992 (pages 5 through 8 withheld)
18	Interview with witness (pages 5, 27 and 33 withheld)
22	Interview notes with witness (four pages withheld)
23	Investigation file (pages 1 through 6 and 14 through 33 withheld)
25	Notes by witness (pages 2 through 10 withheld)
31	Memorandum to file dated June 2, 1992 (three pages withheld)