



Information and Privacy
Commissioner/Ontario

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

ORDER P-837

Appeal P-9400009

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Community and Social Services (the Ministry) received a six-part request for access to records relating to the requester's employment with the Ministry. The Ministry located a number of records which were responsive to the request and denied access to them, in whole or in part, claiming the application of the following exemptions contained in the Act:

- third party information - sections 17(1)(a), (b) and (d)
- danger to safety or health - section 20
- invasion of privacy - sections 21 and 49(b)
- evaluative or opinion material - section 49(c)

The requester appealed the Ministry's decision to deny access to the responsive records. Following the mediation of the appeal, the records remaining at issue consist of the following:

1. The undisclosed portions of a two-page memorandum dated October 6, 1993.
2. The undisclosed portions of a two-page memorandum dated October 7, 1993.
3. Two pages of handwritten notes, undated.
4. A one-page memorandum dated August 31, 1993.

A Notice of Inquiry was forwarded to the Ministry, the appellant and to four persons whose interests may be affected by the disclosure of the information contained in the records. Representations were received from the appellant, the Ministry and from one of the affected persons, who consented to the disclosure of her personal information.

The Ministry indicates that, in its view, the handwritten notes and August 31, 1993 memorandum are not responsive to the appellant's request as framed. In her original request letter, the appellant specifically asked for "all other documents in the possession of management which pertain to the outstanding matters . . . include all documents in which I am named but not copied". I find that both the handwritten notes and the August 31, 1993 memorandum refer to the appellant and that they fall within the ambit of her request.

In its representations, the Ministry indicates that certain other records may have been disclosed to the appellant in the course of other proceedings involving the parties to this appeal. As the records are responsive to the request and Ministry is unclear about whether it has already granted access to these records but is not objecting to disclosure pursuant to any exemption, I order it to disclose to the appellant the following documents:

1. A one-page memorandum dated October 26, 1993 to the Administrator from an individual in Financial Services.
2. A one-page memorandum dated October 5, 1993 to the Administrator from the Vice-President of OPSEU Local 436.
3. A two-page letter dated October 26, 1993 from the Administrator responding to Item 2.
4. Two one-page memoranda dated November 24, 1993 to the Administrator from an individual in Financial Services.

I will now address the application of each of the exemptions to the records which remain at issue.

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 17(1)(a) or (b) of the Act the Ministry must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a) or (b) of subsection 17(1) will occur.

For a record to qualify for exemption under section 17(1)(d) of the Act, the Ministry must satisfy each part of the following test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied in confidence, either implicitly or explicitly; **and**

3. disclosure of the record could reasonably be expected to:
- (a) reveal information of the type set out in (1) which was supplied to a conciliation officer, a mediator, a labour relations officer, or another person appointed to resolve a labour relations dispute;

OR

- (b) reveal the report of a conciliation officer, a mediator, a labour relations officer, or another person appointed to resolve a labour relations dispute.

The Ministry has not provided any representations to substantiate its position that the exemptions provided by sections 17(1)(a), (b) or (d) are applicable to any of the remaining records. I have reviewed each of the records at issue and find that none of them contain information which qualifies as a trade secret or scientific, technical, commercial, financial or labour relations information. Accordingly, as the first part of the test has not been satisfied, I find that sections 17(1)(a), (b) and (d) have no application to the records which remain at issue in this appeal.

DANGER TO HEALTH OR SAFETY

To establish the application of the exemption in section 20 of the Act, the Ministry must show that there is a reasonable expectation that disclosure could result in the specified harm, in this case a serious threat to the health or safety of an individual. The possibility of harm is not sufficient. At a minimum, the Ministry must establish a clear and direct linkage between the disclosure of the information and the harm alleged.

I have been provided with no evidence to establish a clear and direct linkage between the disclosure of the records at issue and possible harm to the health or safety of any individual. Accordingly, I find that section 20 has no application in the circumstances of this appeal.

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

I have reviewed the records at issue in this appeal and find that they contain the personal information of both the appellant and other identifiable individuals.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by

a government body. Section 49 of the Act provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the requester access to that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations which are relevant in the circumstances of the case.

The Ministry submits that the following presumptions apply to the personal information found in the records:

- the information relates to medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation - section 21(3)(a)
- the information consists of personal recommendations or evaluations, character references or personnel evaluations - section 21(3)(g).

The appellant indicates that while the records may contain medical, psychiatric or psychological history, that information relates exclusively to herself. Further, the appellant argues that the following factors listed under section 21(2) of the Act are relevant considerations:

- the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario to public scrutiny - section 21(2)(a)
- the personal information is relevant to a fair determination of her rights - section 21(2)(d).

I have reviewed the representations of the parties and the records at issue and make the following findings:

- (1) None of the records contain information relating to medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation of the appellant or any other individual. The August 31, 1993 memorandum makes reference to concerns expressed by the author about the manner in which the actions of the appellant may be affecting her co-workers. I find that information of this

kind does not fall within the ambit of section 21(3)(a).

- (2) I find that none of the records contain information which may be characterized as personal recommendations or evaluations, character references or personnel evaluations. Accordingly, the presumption provided by section 21(3)(g) of the Act has no application in this appeal.
- (3) To summarize, I have found that none of the presumptions provided by section 21(3) or the considerations listed in section 21(2) favouring non-disclosure are applicable to the records at issue in this appeal. Section 49(b) does not, therefore, apply to exempt these records from disclosure.

EVALUATIVE OR OPINION MATERIAL

The Ministry has not provided any representations to substantiate its position that the records at issue are exempt from disclosure under section 49(c) of the Act. I find that section 49(c) has no application to the records at issue in this appeal.

As none of the exemptions claimed by the Ministry apply to the records, I find that they should be disclosed, in their entirety, to the appellant.

ORDER:

1. I order the Ministry to disclose to the appellant those records described in this order, in their entirety, within thirty-five (35) days of the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ January 13, 1995