



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-924

Appeal P-9400806

Ministry of the Attorney General



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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 appellant has requested records from the Ministry of the Attorney General (the Ministry) relating to a job competition in which he was a candidate. The appellant was interviewed but not offered the position.

The Ministry granted full access to some records (including the appellant's own resume, application, interview answers and scoring sheets) and partial access to others. In addition, access was denied to some records in their entirety. All of the information which was not disclosed was withheld pursuant to the following exemption in the Act:

- invasion of privacy - section 21(1).

The appellant filed an appeal of the Ministry's decision. During mediation, the appellant indicated that he still seeks access to the resumes, covering letters, interview answers and scores of the other three individuals (the affected persons) who were interviewed in the competition. The interview answers and scores were recorded on preprinted forms completed by each of the three interview panel members, and each panel member also prepared a summary scoring sheet for each candidate interviewed.

During the inquiry stage of this appeal, the Ministry decided to grant access to some parts of the panel members' interview answer sheets and scoring summaries with respect to two affected persons (the other two unsuccessful candidates who were interviewed). Parts of these records were withheld under section 21. These records were **not** disclosed with respect to the successful candidate in the competition.

The appellant has indicated that he does not require access to the names or addresses of the affected persons, and accordingly, the parts of these records which consist of that information are not at issue in this appeal. As the only information severed from the scoring summaries of the other two unsuccessful candidates was the candidate's name, those summaries are not at issue.

To summarize, pages 68-103, 353-359, 373-380 and 383-387 (as numbered by the Ministry) are at issue, as well as parts of pages 113, 114, 125, 126, 137, 138, 149, 150, 161, 162, 164, 173 and 174. These records consist of the covering letters and resumes of the other three candidates interviewed (including an application for employment on an Ontario government form submitted by one of the affected persons), the scoring summaries and all answer sheets pertaining to the successful candidate, and parts of the answer sheets with respect to the other two unsuccessful candidates (consisting of the answers to questions pertaining to their job experience).

The appellant states that he wishes to rely on the "public interest override" in section 23 of the Act.

Accordingly, the issues to be decided in this appeal are whether the exemption in section 21(1) applies to the records and parts of the records which are at issue, and if so, whether the public interest override in section 23 applies.

A Notice of Inquiry was sent to the appellant and the Ministry, and to all three affected persons. Representations were received from the appellant, the Ministry and two affected persons.

## **DISCUSSION:**

### **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 my view, all of them consist of recorded information about individuals other than the appellant. Given the small number of candidates interviewed in this competition, and the nature of the information at issue, I am of the view that, even with the names and identifiers removed, this information could be related to identifiable individuals and I find, therefore, that all of it constitutes the personal information of individuals other than the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

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 personal privacy. Where one of the presumptions 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 if 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 in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

### **The Ministry's Submissions**

Covering Letters, Application Form, Resumes

In arguing against additional disclosure, the Ministry submits that the presumed unjustified invasion of privacy referred to in section 21(3)(d) (employment and/or educational history) applies to all of these records. The Ministry also submits that the factor in section 21(2)(h) (information supplied in confidence) applies to the resumes in their entirety. The Ministry also submits that the presumption in section 21(3)(f) (financial information) and the factor in section 21(2)(h) apply to part of the application form completed by one candidate (pages 379-380). In addition, the Ministry submits that the presumption in section 21(3)(h)

(personal characteristics, political beliefs or associations) applies to pages 356 and 386, which are parts of two resumes.

#### Interview Answers

The Ministry submits that, even with personal identifiers removed, the parts of these records which were withheld for the two unsuccessful candidates other than the appellant would consist of their employment and/or educational history, which would serve to identify these candidates. The Ministry argues that, on this basis and because of the nature of these particular answers, the presumption in section 21(3)(d) (employment and/or educational history) would apply to this information.

With respect to the successful candidate, whose interview answers and score sheet were entirely withheld, the Ministry submits that, even with personal identifiers removed, the answers and scores would serve to identify this candidate, revealing not only her employment and educational history, but her management skills and knowledge of relevant law. The Ministry argues that all this information falls under a presumption. The Ministry does not say so explicitly but I assume this is also a reference to section 21(3)(d).

#### OHRC Complaint

The Ministry's representations indicate that the appellant intends to file a complaint with the OHRC regarding the competition, suggesting the possible application of section 21(2)(d) (fair determination of rights).

In this regard, the Ministry submits that the factor in section 21(2)(d) does not apply because the appellant has all the information he needs to proceed with his complaint to the OHRC, and that additional disclosure should be as decided by the OHRC.

#### **The Affected Persons' Submissions**

One of the affected persons submits that the types of information pertaining to her which remain at issue would all fall within the presumptions in sections 21(3)(d) and 21(3)(g). The latter section provides a presumption with respect to information which "consists of personal recommendations or evaluations, character references or personnel evaluations".

The other affected person who made representations submits that all of the information pertaining to her falls within the presumption in section 21(3)(g).

### **The Appellant's Submissions**

The appellant's letter of appeal questions the fairness of the interview process in the competition referred to in his request. This appears to raise the possible application of section 21(2)(a), which applies where disclosure is desirable for the purpose of subjecting the activities of the Ontario government and its agencies to public scrutiny.

The appellant's representations do not refer to the intended OHRC complaint mentioned by the Ministry. The appellant's only reference to any possible legal action is a statement that the lack of any further disclosure in this case will "... leave the government open to further litigation based upon unfair, biased and discriminatory practices ...".

In his representations, the appellant states that he bases his entire case on the public interest override in section 23 of the Act. I will consider this issue in the section entitled "Public Interest in Disclosure", below.

### **Applicable Authorities**

In order for section 21(2)(d) to apply, Order P-312 indicates that the appellant must establish that:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; **and**
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**
3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; **and**
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

I also note that the application of section 21 to resumes and job competition records has been canvassed in many previous orders.

In Order M-99, former Inquiry Officer Asfaw Seife found that a covering letter and resume submitted in a job competition consisted of the author's employment and educational history and the presumption in section 14(3)(d) of the Municipal Freedom of Information and Protection of Privacy Act (the equivalent of section 21(3)(d) of the Act) applied to those records.

In Order P-722, Inquiry Officer Donald Hale found that interview scores constituted personnel evaluations and the presumption in section 21(3)(g) applied to them.

I agree with all these interpretations and conclusions, and I adopt them for the purposes of this order.

### **Findings**

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

- (1) The presumed unjustified invasion of personal privacy in section 21(3)(d), relating to employment and/or educational history, applies to the covering letters and resumes of the affected persons. This same presumption also applies to the application form submitted by one affected person. It also applies to the answers given by all three affected persons to questions 13, 14 and 15.
- (2) The presumed unjustified invasion of personal privacy in section 21(3)(g), relating to personnel evaluations (and other types of references, recommendations and evaluations) applies to the scores and scoring summary of the successful candidate in the competition.
- (3) The presumed unjustified invasion of personal privacy in section 21(3)(f) (financial information) applies to the parts of one candidate's application which disclose the individual's past salary (parts of pages 379-380).
- (4) The presumed unjustified invasion of personal privacy in section 21(3)(h) (personal characteristics, political beliefs or associations) applies to the parts of two resumes (parts of pages 356 and 386) which reveal political associations.
- (5) I have not been provided with sufficient evidence to substantiate the application of the factor in section 21(2)(h) (information supplied in confidence).
- (6) I have not been provided with sufficient evidence to substantiate the application of the factor favouring disclosure in section 21(2)(a) (public scrutiny of the government's activities). All of the appellant's representations in this regard are aimed at section 23 and will be discussed in more detail below. For the purposes of section 21(2)(a), I am not satisfied that the appellant's allegations about the interview process, nor his concerns about government funding for an educational program he attended, are sufficient to demonstrate that disclosure of these particular records is desirable to subject the government's activities to public scrutiny.
- (7) The appellant has not adduced any evidence to support the application of the factor in section 21(2)(d) (fair determination of rights), and the evidence before me is not sufficient to establish its application in the circumstances of this appeal.

- (8) Section 21(4) does not apply to any of the information in the parts of the records which are at issue.
- (9) Having found that the presumed unjustified invasions of personal privacy in sections 21(3)(d), (g), (f) and (h) apply to various parts of the records at issue, and that no factors favouring disclosure have been established with respect to **any** part of these records, I find that disclosure of any of the withheld information which is at issue in this appeal would constitute an unjustified invasion of personal privacy. Accordingly, the exemption in section 21(1) applies to all of the information at issue in this appeal.

### **PUBLIC INTEREST IN DISCLOSURE**

In order for section 23 of the Act to apply to a record, two requirements must be met. First, there must be a compelling public interest in the disclosure of the record. Second, this interest must clearly outweigh the purpose of the exemption which otherwise applies to the record.

The appellant's submission in this regard may be summarized as follows:

- (1) the job competition process was biased and discriminatory, and
- (2) the public funding of an educational program named by the appellant is a poor use of public funds, since graduates have difficulty securing positions in the field.

With respect to item (1), I find that the appellant's evidence is not sufficient to establish a public interest in disclosure. In the circumstances of this appeal, it is my view that, if the appellant feels aggrieved by the results of the competition, that is a private matter between him and the Ministry, which the appellant may decide to pursue in another forum such as the OHRC.

Turning to item (2), the appellant has not explained how the records at issue relate to the question of whether the graduates of the specified educational program are finding jobs. It is clear that the appellant, a graduate of this program, was not hired. I am unable to find any other connection between this competition, and the records pertaining to it, and the appellant's concerns outlined in item (2). I find that no compelling public interest in the disclosure of these particular records has been established by these submissions.

Accordingly, section 23 does not apply in the circumstances of this appeal.

### **ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_ May 12, 1995