



Information and Privacy
Commissioner/Ontario

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

ORDER P-886

Appeal P-9400671

Ontario Northland Transportation Commission



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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 Ontario Northland Transportation Commission (the Commission) received a request for access to a report prepared by consultants retained by the Commission in 1993.

The Commission denied access to a document entitled "Management Function Review" (the report) pursuant to the following exemptions:

- advice or recommendations - section 13(1)
- economic and other interests - section 18(1)(f)
- proposed plans of an institution - section 18(1)(g)
- invasion of privacy - section 21

During mediation, the appellant indicated that he was only interested in obtaining access to certain portions of the report.

A Notice of Inquiry was provided to the appellant, the Commission and an individual whose interests might be affected by the disclosure of the report (the affected person). Representations were received from the Commission only.

In its representations, the Commission indicated that it was no longer relying on the exemptions provided by sections 13(1) and 18(1)(f) and (g) of the Act. Consequently, it is not necessary for me to consider the application of these exemptions.

The Commission also indicated in its representations that it was willing to release all the portions of the report remaining at issue with the exception of page 53 and the names of two former employees on page 55. Therefore, I order the Commission to disclose to the appellant those portions of the report which the Commission has indicated it is willing to release.

The appellant then advised that he was not interested in obtaining access to the names of the two former employees on page 55.

Accordingly, the sole issue to be addressed in this order is whether section 21 of the Act applies to page 53 of the report.

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.

Page 53 does not contain the names of any individuals. However, I find that the information does pertain to an identifiable individual. The affected person may be identified by reference to his former position with the Commission.

Information about an employee does not constitute personal information where the information relates to the individual's employment responsibilities or position. Some of the information about the affected person falls into this category.

Where, however, the information involves an evaluation of the employee's performance, these references are considered to be the individual's personal information. Accordingly, I find that some of the comments on page 53 constitute the personal information of the affected person.

Section 21(1)(f) of the Act states:

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.

Section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that the section 21(1)(f) exception applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

In the circumstances of this appeal, the only representations I have been provided with support the view that disclosure of the personal information of the affected person **would** constitute an unjustified invasion of personal privacy. Accordingly, I find that the exception contained in section 21(1)(f) does not apply. The personal information is, therefore, exempt pursuant to the mandatory exemption provided by section 21 of the Act.

ORDER:

1. I uphold the Commission's decision to deny access to the portion of page 53 of the report which I have highlighted in yellow on the copy of this page provided to the Commission's Information and Privacy Co-ordinator with a copy of this order.
2. I order the Commission to disclose to the appellant pages 48-52, 54, 57-63 and 81-90 of the report in their entirety, and those portions of pages 53 and 55 which are **not** highlighted in yellow on the copy of the pages provided to the Commission's Information and Privacy Co-ordinator with a copy of this order. The highlighted portions of page 55 represent the information which is no longer at issue in this appeal.

3. I order the Commission to disclose to the appellant the pages described in Provision 2 within thirty-five (35) days of the date of this order, but not earlier than the thirtieth (30th) day following the date of this order.
4. In order to verify compliance with this order, I reserve the right to require the Commission to provide me with copies of the pages which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ March 7, 1995