



Information and Privacy
Commissioner/Ontario

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

ORDER P-940

Appeal P-9500015

Ministry of Health



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NATURE OF THE APPEAL:

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the complete contents of a file involving a job competition in which the requester was an unsuccessful candidate. The Ministry located 105 records totalling 1,028 pages which were responsive to the request and granted access to those records or portions of records which related exclusively to the requester. The Ministry denied access to similar information where it pertained to individuals other than the appellant, claiming the application of the following exemption contained in the Act:

- invasion of privacy - section 21(1).

The requester appealed the Ministry's decision. During the course of the mediation of the appeal, the appellant indicated that he is seeking access only to the interview answers and scores, as well as the written assignments and scores awarded to each of the candidates involved in the job competition. He is not seeking access to the names or other personal identifiers of the other candidates (the affected persons) which may be contained in the records. I have highlighted in blue on the copy of the records provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order those portions of the records which contain the personal identifiers of the affected persons. This information should **not** be disclosed.

A Notice of Inquiry was provided to the Ministry, the appellant and 21 persons whose rights may be affected by the disclosure of the records. Representations were received from the Ministry, the appellant's union representative and 10 of the affected persons. Seven of the affected persons consented to the disclosure of the requested information which relates to them, with their names and personal identifiers severed. The remaining information relating to these seven individuals should, accordingly, be released to the appellant.

Accordingly, the information which remains at issue is contained in Records 3 (the scoring summary sheet), 44-61 (the written assignments) and 63-80 (the interview answers and scores) and relates only to those affected persons who have not consented to its disclosure or who have not responded to the Notice of Inquiry.

PRELIMINARY ISSUE:

The appellant has raised the application of an agreement dated August 5, 1994 entered into between his union and Management Board Secretariat. This agreement, referred to as the Joint File Review Pilot Project, provided that in the event of a dispute arising from a job competition, the union would be entitled to the disclosure of certain personal information relating to the candidates in a competition, including information of the type which is the subject of a portion of this appeal. Reference was made to section 42(e) of the Act which prohibits the disclosure of personal information except "for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder".

The Ministry argues that the process of obtaining access to the information contained in a competition file pursuant to the Joint File Review Pilot Project agreement is a separate process from that under the Act, and may be pursued through the Ministry's Human Resources Branch rather than the Freedom of Information and Privacy Protection office.

In Order M-96, former Assistant Commissioner Tom Mitchinson made the following comment with respect to section 32(e) of the Municipal Freedom of Information and Protection of Privacy Act, which is identical to section 42(e) of the Act, finding that:

Section 32 is contained in Part II of the Act. This Part establishes a set of rules governing the collection, retention, use and disclosure of personal information by institutions in the course of administering their public responsibilities. Section 32 prohibits disclosure of personal information except in certain circumstances; it does not create a right of access. The Federation's request to the Board was made under Part I of the Act, and this appeal concerns the Board's decision to deny access. In my view, the considerations contained in Part II of the Act, and specifically the factors listed in section 32, are not relevant to an access request made under Part I.

In the present appeal, the appellant's request was made under Part II of the Act, the equivalent of Part I of the Municipal Act. I adopt the approach expressed by Assistant Commissioner Mitchinson in Order M-96 that the factors listed in Part III of the Act, the equivalent of Part II of the Municipal Act, are not relevant to an access request made under Part II. Accordingly, I find that section 42(e), and the agreement which the appellant submits requires that the records be disclosed, is not relevant to the determination of this access request under Part II.

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 information remaining at issue contained in Records 3, 44-61 and 63-80. In my view, all of it consists of recorded information about individuals other than the appellant. Given that the appellant has worked with a number of the other candidates interviewed in this competition and is familiar with their skills, handwriting and facility with language, I am of the view that, even with the names and identifiers removed, this information could be related to individuals who are identifiable by the appellant. I find, therefore, that all of the remaining information 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.

In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f) which reads as follows:

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.

Because 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 section 21(1)(f) applies, I must find that the disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) 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 Ministry 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 appellant has not raised any of the considerations listed in section 21(2) which favour the disclosure of the remaining personal information contained in the records. The appellant has made reference to the Joint File Review Pilot Project agreement, however, and I have considered it as an unlisted consideration in balancing the privacy interests of the affected persons against the access rights of the appellant.

The appellant did not suggest that sections 21(4) or 23 of the Act apply to the information at issue.

I have reviewed the terms of the agreement and find that it is not a relevant consideration in the circumstances of this appeal under the Act. Rather, I find it was designed to establish a set of rules governing the collection, retention, use and disclosure of the personal information contained in the records in the context of the labour relations relationship between the union and Management Board of Cabinet.

In the absence of any relevant considerations favouring disclosure, I find that the release of the remaining information at issue in this appeal would constitute an unjustified invasion of personal privacy. Accordingly, the exemption in section 21 applies to the remaining information which relates to those affected persons who

have not consented to its disclosure. I have highlighted in yellow on the copy of the records which were provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order those portions of the records relating to the affected persons which are exempt from disclosure under section 21(1). These records should **not** be disclosed.

ORDER:

1. I uphold the decision of the Ministry to deny access to those portions of the records which are highlighted in blue and in yellow on the copy provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order. The highlighted portions of the records should **not** be disclosed.
2. I order the Ministry to disclose to the appellant those portions of the records which are not highlighted within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with copies of the records disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ June 12, 1995