



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-909

Appeal P-9400745

Ministry of the Solicitor General and Correctional 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 appellant is an employee of the Ministry of the Solicitor General and Correctional Services (the Ministry). He submitted a request to the Ministry for a complete copy of his personnel file. In subsequent correspondence sent by the appellant to the Ministry, he indicated that he is interested in receiving information concerning any allegations which may have been made against him by other staff members.

In its response to this request, the Ministry granted partial access to the personnel file. Access to some information was denied on the basis of the following exemptions:

- solicitor/client privilege - section 19
- evaluative or opinion material - section 49(c).

In addition, parts of the records were not disclosed because, in the Ministry's view, they are not responsive to the request.

The appellant filed an appeal of the Ministry's decision with the Commissioner's office. A Notice of Inquiry was sent to the appellant and the Ministry. Because the records appeared to contain the personal information of individuals other than the appellant, the Notice of Inquiry also invited representations on the issue of whether disclosure of that information would be an unjustified invasion of the personal privacy of those individuals. Both sections 21(1) and 49(b) of the Act provide exemptions relating to privacy protection.

In response to the Notice of Inquiry, representations were received from both parties. In its representations, the Ministry indicated that it is willing to disclose Records 35, 64 and 93. The Ministry has undertaken to disclose these records, and accordingly, they will not be dealt with further in this order. The Ministry only claimed the exemptions in sections 19 and 49(c) for Record 93, which it has now undertaken to disclose. Accordingly, these exemptions are not at issue in this appeal.

The issues to be decided are: whether the records which remain at issue are responsive to the request, and if so, whether they are exempt under section 21(1) or 49(b) of the Act.

The records at issue are as follows (using the numbers assigned by the Ministry):

Record 125	Letter from Deputy Superintendent to Regional Personnel Administrator, September 23, 1982
Record 146	Multiple Address Change form, January 1984
Record 150	Multiple Address Change form, July 1984

Record 193	Memo from Office Manager to Payroll, re parking fees, June 2, 1987
Record 194	Multiple Address Change form, date illegible.

Record 194 was withheld in its entirety. Parts of all of the other records were disclosed, and only the undisclosed parts of them are at issue.

## **DISCUSSION:**

### **RESPONSIVENESS OF RECORDS**

As noted above, the Ministry contends that Record 194 in its entirety, and the undisclosed parts of the other records, are not responsive to the appellant's request. Both parties have made representations on this issue, and I have considered them in making my decision.

I do not agree with the Ministry's argument that the records are not responsive. The appellant asked for his personnel file, and these records were all placed in that file, notwithstanding that they contain some information pertaining to other individuals. Accordingly, in my view, all of the records at issue are responsive.

### **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. I find that Records 125, 146, 150 and 193 all contain the personal information of the appellant, as well as that of another individual or individuals. As noted above, only parts of these records have not been disclosed. I find that the undisclosed portions of these records consist of personal information pertaining to individuals other than the appellant. All of the appellant's personal information in these records has already been provided to him.

With respect to Record 194, I find that it does not contain any information pertaining to the appellant. The only personal information in this record pertains to other 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 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 institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the

requester access to that information. In view of the findings I have made above with respect to personal information, I will consider the possible application of section 49(b) to Records 125, 146, 150 and 193.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits an institution from releasing this information. In view of the findings I have made above with respect to personal information, I will consider the possible application of section 21(1) to Record 194.

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. This is true whether the exemption being considered is section 21(1) or section 49(b).

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 institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Ministry argues that the undisclosed information in the records constitutes the employment history of individuals other than the appellant, and that, for this reason, the presumed unjustified invasion of privacy in section 21(3)(d) applies. The Ministry also points out that the undisclosed information has no connection to the appellant, and in most cases it appears in the records for reasons of administrative convenience.

The appellant submits that since the undisclosed information is in his personnel file, it must pertain to him. Based upon a review of the records, I accept the Ministry's submission that the undisclosed information in Records 125, 146, 150 and 193 is simply included on documents which also contain the appellant's information, for reasons of administrative convenience, and does not pertain to the appellant in any way. Similarly, although Record 194 contains no information pertaining to the appellant and it is not clear why it was in his personnel file, it is quite clear that the information has no connection to the appellant.

Having reviewed the records and the representations submitted to me, I make the following findings:

- (1) The undisclosed information in Record 125 pertains to the employment history of an individual other than the appellant and the presumption in section 21(3)(d) applies to it.
- (2) In my view, the character of the undisclosed information in Records 125, 146, 150 and 193 (which includes, for example, the home addresses and Social Insurance Numbers of other individuals), and the fact that it has no connection whatsoever to the appellant, is a relevant circumstance favouring non-disclosure in the particular circumstances of this appeal.

- (3) No factors favouring disclosure have been established with regard to any of the records at issue, and sections 21(4) and 23 do not apply to the undisclosed information.
- (4) Accordingly, disclosure of the withheld information in Records 125, 146, 150 and 193 would constitute an unjustified invasion of the personal privacy of individuals other than the appellant, and the exemption provided by section 49(b) applies to it.
- (5) Since no factors favouring disclosure have been established with respect to Record 194, it is exempt from disclosure under section 21(1).

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_ April 19, 1995