



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-571

Appeal M-9500168

Town of Dryden



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NATURE OF THE APPEAL:

An individual who had been denied social assistance made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Town of Dryden (the Town) for access to the results of the Town's Welfare Administrator's investigation into the circumstances surrounding the requester's dismissal from his most recent employment. The Town denied access to the records under the following exemptions:

- invasion of privacy - section 14
- evaluative or opinion material - section 38(c)

The requester appealed the Town's denial of access. After being notified of the appeal, the Town indicated that the invasion of privacy exemption found in section 38(b) was also being applied to the records. During mediation, the appellant narrowed the scope of the appeal to a letter dated December 22, 1994 from his former employer to the Welfare Administrator. The appellant also indicated he is seeking access only to what the former employer wrote about him, not references to other individuals.

A Notice of Inquiry was sent to the Town, the appellant, and the former employer who wrote the letter (the affected person), which is the sole record at issue in this appeal. Representations were received from all of the parties.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

...

- (e) the personal opinions or views of the individual except if they relate to another individual,

...

- (g) the views or opinions of another individual about the individual,

...

By looking at parts (e) and (g) of the definition, it is clear that individual A's recorded personal opinions or views about individual B constitutes the personal information of individual B only. The record contains the affected person's opinions and comments about the appellant's work during his employment. Therefore, it contains only the personal information of the appellant and not the affected person.

The appellant has confirmed that he is only seeking access to what the affected person wrote about him. As I have found that this information does not constitute the personal information of the affected person, it follows that sections 38(b) and 14 do not apply to it.

EVALUATIVE OR OPINION MATERIAL

Section 38(c) provides:

A head may refuse to disclose to the individual to whom the information relates personal information,

that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by an institution if the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;

In applying section 38(c), it is important to note that the exemption to the right of access contained therein does not apply to all evaluative or opinion material compiled for employment purposes. Rather, the exemption applies to such material only where the disclosure would reveal the identity of the source who may reasonably have assumed that his or her identity would be held in confidence.

In order to determine whether the appellant was eligible for assistance, the Welfare Administrator must determine whether the circumstances surrounding the appellant's unemployment were beyond his control. In this particular case, the appellant was found to be ineligible for assistance as the Welfare Administrator had determined that the appellant was fired for just cause. In the circumstances, the appellant knew that his former employer would be contacted for this information, and knew the identity of his former employer. Accordingly, it is my view that the affected person cannot reasonably have assumed that her identity would be held in confidence. Accordingly, I find that section 38(c) does not apply.

ORDER:

1. I order the Town to disclose the record, with the exception of the references to individuals other than the appellant and the affected person, to the appellant within thirty-five (35) days after 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 Town to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____ July 19, 1995
Holly Big Canoe
Inquiry Officer