



Information and Privacy
Commissioner/Ontario

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

ORDER P-982

Appeal P-9400822

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 Ministry of the Attorney General (the Ministry) received a request from a member of the media for access to all information concerning the establishment of a Local Area Network in the Ministry's Computer and Telecommunications Branch. More specifically, the requester sought access to information concerning complaints, memorandums or correspondence related to a named individual.

The only record identified by the Ministry as responsive to the request is a one-page memo written by the individual named in the request to a security officer regarding necessary administrative steps associated with a consultant's departure. The Ministry denied access under the following exemption:

- invasion of privacy - section 21

The requester appealed the denial of access and claimed that there was a compelling public interest in the disclosure of the record. He indicated that he believes serious questions have been raised about the manner in which the Ministry went about hiring at least one person to carry out the project, and that security violations occurred with regard to the process for his hire.

A Notice of Inquiry was sent to the Ministry, the appellant and an individual referred to in the record (the affected person) by the individual named in the request. Representations were received from all parties.

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. I have reviewed the record and the representations of the parties and, in my view, the first paragraph of the record contains the personal information of the affected person. The remaining two paragraphs are purely administrative in nature, are not, in my view, **about** the affected person, and do not qualify as his personal information. Neither are they the personal information of the author of the memorandum.

Section 21 of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in the circumstances listed in sections 21(1)(a) through (f) of the Act. Section 21(1)(f) reads:

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.

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.

The Ministry claims that the record contains the employment history and a personal evaluation of the affected person and, therefore, the presumptions found in sections 21(3)(d) and (g) apply. The Ministry also submits that the information contained in the record can be deemed highly sensitive (section 21(2)(f)) and likely to damage the reputation of the affected person (section 21(2)(i)).

The appellant submits that there is a need for public accountability.

Having considered the record and the representations, I find that the first paragraph of the record relates to the employment history of the affected person and the requirements for a presumed unjustified invasion of privacy under section 21(3)(d) have been met. 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. Section 21(4) is not applicable in the circumstances of this appeal. The first paragraph of the record, therefore, is exempt from disclosure under section 21 of the Act.

PUBLIC INTEREST IN DISCLOSURE

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

One of the principle purposes of the Act is to open a window into government. The Act is intended to enable an informed public to better participate in the decision-making process of government and ensure the accountability of those who govern. Accordingly, in my view, there is a basic public interest in knowing more about the operations of government.

"Compelling" is defined as rousing strong interest or attention (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the Act's central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

Once a compelling public interest is established, it must be balanced against the purpose of the exemption which has been found to apply. Section 23 recognizes that each of the exemptions listed therein, while serving to protect valid interests, must yield on occasion to the public interest in access to government information. Important considerations in this balance are the principle of severability and the extent to which

withholding the information is consistent with the purpose of the exemption.

While I agree with the appellant that the Ministry must be accountable to the public, I am not satisfied that disclosure of the first paragraph of the record at issue here will contribute in any meaningful way to the public's understanding of the activities of government. Accordingly, I find that there is no compelling public interest in disclosure, and section 23 does not apply.

ORDER:

1. I uphold the Ministry's decision to withhold the first paragraph of the record.
2. I order the Ministry to disclose the record, with the exception of the first paragraph, to the appellant within thirty-five (35) days of the date of this order but not earlier than the thirtieth (30th) day after 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 a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

August 25, 1995