



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

ORDER P-1008

Appeal P-9500267

Ministry of Community and Social Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléco: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Community and Social Services (the Ministry) received a request for access to information concerning an investigation conducted by the Ministry at her workplace under its Workplace Discrimination and Harassment Policy (WDHP). Specifically, the requester, who was one of the complainants in the investigation, sought access to her own witness statement, the rebuttal to that statement made by the respondent to the complaint and the final investigation report.

The Ministry located the requested records and granted access to the requester's witness statement, the respondent's rebuttal and to those portions of the final investigation report which relate directly to the requester's complaint. The remaining portions of the investigation report were not disclosed under the following exemptions contained in the Act:

- invasion of privacy - sections 21 and 49(b).

The requester appealed the decision to deny access to the complete investigation report. A Notice of Inquiry was provided to the appellant, the Ministry and to 14 other individuals whose rights may be affected by the disclosure of the information contained in the investigation report (the affected persons). Representations were received from the Ministry and five of the affected persons, three of whom consented to the disclosure of their personal information.

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 investigation report and I find that it contains the personal information of the appellant and a number of 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 Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the requester access to that information.

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. 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 Ministry 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 submits that the information contained in the record falls within the presumption under section 21(3)(b) as the case which is the subject of the investigation is "pending a final resolution". It also argues that the information is highly sensitive (section 21(2)(f)), that it was supplied in confidence (section 21(2)(h)) and that its disclosure would unfairly damage the reputation of the respondent to the complaint (section 21(2)(i)).

The two affected persons who have objected to the disclosure of their personal information have not made reference to any of the factors listed in section 21(2), nor have they referred to any unlisted factors other than their interest in not having the record disclosed.

I have reviewed the information contained in the investigation report and make the following findings:

- (1) As written consent to the disclosure of their personal information has been granted by three of the affected persons, this information should be disclosed to the appellant. I have highlighted those portions of the investigation report which contain the personal information of these individuals alone.
- (2) The presumption contained in section 21(3)(b) has no application to the personal information contained in the investigation report. The record was not compiled as part of an investigation into a possible violation of law, rather as part of an investigation into a complaint of sexual and workplace harassment under the WDHP.
- (3) Certain portions of the investigation report may be characterized as "highly sensitive" within the meaning of section 21(2)(f). I find this to be a factor favouring the non-disclosure of the personal information contained in the record.
- (4) In Order P-962, when considering a request by the respondent to this complaint for copies of the witness statements made by the complainants, I found that much of the information was supplied by the witnesses to the WDHP investigator in confidence, as contemplated by section 21(2)(h). Further, I found that this factor applied particularly to those portions of the record which did not contain the personal information of the requester in that appeal, who was the respondent to the complaint. In that case, I found that the respondent was entitled to sufficient information to enable him to determine what he was accused of and by whom and to enable him to address the validity of the allegations. In addition, I found that the complainants must be given enough information to enable them to ensure that their allegations were adequately investigated. I adopt this rationale for the purposes of this appeal.
- (5) I am not satisfied that disclosure of the information contained in the records would unfairly damage the reputation of the individuals who are referred to therein, and, accordingly, section 21(2)(i) is not a relevant consideration.

The appellant in this case has received her own witness statement, as well as the respondent's rebuttal. In

my view, having been provided with her own statement and that of the respondent which was made in direct response to her complaint, the appellant has been provided with sufficient information to satisfy herself that her allegations were properly investigated.

Having considered and balanced all of the circumstances in this appeal, I find that it would be an unjustified invasion of the personal privacy of the affected persons to disclose those portions of the record which have not been released to the appellant, with the exception of those portions of the report which relate solely to the individuals who have consented to its disclosure.

I have highlighted in yellow on the copy of the record provided to the Ministry's Freedom of Information and Privacy Co-ordinator those portions of the record whose disclosure would not result in an unjustified invasion of the personal privacy of the affected persons. This information should be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose to the appellant within twenty-one (21) days of the date of this order those portions of the record which I have highlighted in yellow on the copy provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I uphold the Ministry's decision to deny access to the remaining portions of the record.
3. In order to verify compliance with 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 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ September 26, 1995