



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1134**

**Appeal P-9500680**

**Ministry of Citizenship, Culture and Recreation**



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## **NATURE OF THE APPEAL:**

The appellant, a newspaper reporter, submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Citizenship, Culture and Recreation (the Ministry). The appellant asked for copies of letters sent to the Ministry with respect to provincial grants for a municipal arena project and a community hall. According to the request letter, the mayor of the municipality cited these letters as the primary reason for these projects not receiving provincial funds.

The Ministry located several responsive letters. After notifying the author of the requested letters (the affected person) under section 28 of the Act, the Ministry decided to deny access to the responsive records, relying on the following exemption in the Act:

- invasion of privacy - section 21(1).

The appellant filed an appeal of the Ministry's decision to deny access.

This office sent a Notice of Inquiry to the Ministry, the appellant and the affected person. Because of comments in the letter of appeal about public interest in the province's refusal of the grants, the Notice of Inquiry raised the possible application of the "public interest override" in section 23 of the Act. In response to this notice, all three parties submitted representations.

In its representations, the Ministry raised the possible application of the discretionary exemption in section 20 of the Act (danger to safety or health). Generally speaking, new discretionary exemptions can only be claimed within thirty-five days after a Confirmation of Appeal is sent to a government organization such as the Ministry. Because of the decision I have made concerning the application of section 21(1), it is not necessary for me to decide whether to permit the Ministry to rely on section 20 in the circumstances of this appeal.

## **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. Sections (e) and (f) of this definition indicate that the following categories of information qualify as personal information:

- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence.

In view of these provisions, I find that the letters constitute the affected person's personal information. In addition, several other individuals are mentioned in the letters, in their personal capacity, and these references constitute their personal information.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 21(2), (3) and (4) 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 institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant.

Having reviewed the records, I am of the view that the presumption in section 21(3) (employment or educational history) applies to a small amount of information in one of the records which describes an individual's employment history. In my view, the remainder of the information in the records is not subject to any of the presumptions in section 21(3). The information relating to employment history is not information to which section 21(4) applies, and I find that it is exempt under section 21. I will consider the possible application of section 23 to this information in my discussion of that section, below.

With respect to the remainder of the information, the Ministry submits that the following factors in section 21(2) are relevant circumstances which weigh in favour of privacy protection:

- unfair exposure to pecuniary or other harm - section 21(2)(e)
- highly sensitive - section 21(2)(f)
- information unlikely to be accurate or reliable - section 21(2)(g)
- information provided in confidence - section 21(2)(h)
- unfair damage to reputation - section 21(2)(i).

The affected person opposed disclosure at the request stage, and in the representations submitted in response to the Notice of Inquiry, this individual made reference to circumstances which relate to sections 21(2)(e), (h) and (i).

The appellant's representations are essentially directed at establishing a public interest in disclosure of the records. This points to the possible application of the factor favouring disclosure in section 21(2)(a) (disclosure desirable for the purpose of subjecting the activities of the Ontario government or its agencies to public scrutiny). These representations are also relevant to the issue of the "public interest override" in section 23, which I will consider under a separate heading, below.

The Ministry and the affected person have provided me with evidence which, in my view, substantiates the relevance of the factors favouring privacy protection in sections 21(2)(e), (f) and (h).

With respect to the factor favouring disclosure in section 21(2)(a), it is clear from all of the representations submitted that the Ministry's decision to deny funding to these projects has been the subject of considerable public discussion. However, in my view, the evidence provided is not sufficient to establish that the records at issue were, in fact, considered by the Ministry in connection with the decision not to fund these projects. Therefore, I am not persuaded that disclosure of these particular records would shed light on the Ministry's decision-making processes or other activities in that regard. Because section 21(2)(a) contemplates disclosure in order to subject the **activities of the government** (as opposed to the views or actions of private individuals) to public scrutiny, I find that this section is not a relevant factor with respect to the records at issue.

I have found that the only relevant factors favour privacy protection. Moreover, even if I had found that the factor favouring disclosure in section 21(2)(a) applied, I would find that the factors favouring privacy protection are more compelling in the circumstances of this appeal. Accordingly, I find that disclosure of the records at issue would constitute an unjustified invasion of personal privacy, and they are exempt under section 21.

I have also considered whether partial disclosure of these records could be effected without disclosing exempt material. In my view, any meaningful partial disclosure would result in an unjustified invasion of personal privacy, and for this reason, partial disclosure is not an option.

## **PUBLIC INTEREST IN DISCLOSURE**

Section 23 of the Act states as follows:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (emphasis added)

Section 23 imposes two requirements, both of which must be satisfied in order to invoke the application of the so-called "public interest override": (1) there must be a compelling public interest in disclosure; and (2) this compelling public interest must clearly outweigh the purpose of the exemption.

In Order P-984, Inquiry Officer Holly Big Canoe described the criteria for the first requirement mentioned in the preceding paragraph, as follows:

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. (emphasis added)

I agree. As noted in my discussion of section 21(2)(a), above, I have not been persuaded that disclosure of the records at issue would shed light on the Ministry's decision-making processes or other activities with respect to the funding of the projects in question. In my view, disclosure of these particular records would not serve the purpose of informing the citizenry "about the activities of their government". It might shed light on the views of the affected person, but that is a different matter. Therefore, I find that no compelling public interest in disclosure has been established, and section 23 does not apply.

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_ February 26, 1996