



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1128**

**Appeal P-9500660**

**Ministry of Community and Social Services**



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## **NATURE OF THE APPEAL:**

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records containing the names of all bargaining unit employees of the Ministry's Information Systems Branch (the ISB) as of July 1, 1995, as well as their unit, official classification, job title and effective start date in the Ontario Public Service.

The Ministry granted access to a list containing the names of all the employees in the ISB, along with their unit, classification and position/title. The Ministry denied access to information contained in the list relating to the employees start dates, claiming the application of the following exemption contained in the Act:

- invasion of privacy - section 21

The requester appealed the Ministry's decision.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties. In addition, the appellant requested that I refer to the information he had provided to this office during the course of the appeal.

After receiving the representations, the Appeals Officer determined that the record appeared to contain the personal information of the appellant. Accordingly, supplementary representations were sought from both parties regarding the possible application of section 49(b) of the Act. Additional representations were received from both parties. The Ministry indicates that it is willing to disclose the appellant's own personal information to him. This order will, accordingly, contain a provision for the disclosure of this 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. I find that the record contains the personal information of each of the individuals who are listed, including the appellant.

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 appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information would not constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to his or her own personal information, the only situation under section 49(b) in which

he or she can be denied access to the information is if it can be demonstrated that the disclosure of the information would constitute an unjustified invasion of another individual's privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether 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 which are relevant in the circumstances of the case.

The appellant indicates that he acts as the shop steward on behalf of the bargaining agent for certain employees of the ISB. He submits that all bargaining unit employees who join the public service are covered by a Collective Agreement and that their consent to the disclosure of their personal information to their bargaining agent, and its' shop stewards, is understood to have been granted. Further, he submits that when a new employee joins the ISB, management circulates some biographical information about the new employee to others in the workplace. He has provided me with an example of one of these announcements and submits that, had he kept a copy of each announcement, he would then know the start dates for each individual in the ISB.

The Ministry argues that the start date for each employee relates to their employment history and, therefore, the presumption found in section 21(3)(d) of the Act applies to this information.

Having carefully reviewed the record at issue and the representations of the parties, I make the following findings:

1. I find that the disclosure of the start dates would reveal the length of service for each employee and that this information relates to employment history within the meaning of section 21(3)(d) of the Act. Accordingly, the disclosure of this information would constitute a presumed unjustified invasion of the privacy of the listed employees under section 21(3)(d).
2. The personal information at issue does not fall under section 21(4) and the appellant has not raised the possible application of section 23 of the Act.
3. I do not accept the appellant's arguments that the consent of the bargaining unit employee's personal information to him in his capacity as shop steward "is understood".
4. While I recognize that new employee announcements reveal the start date of these individuals at the time they are issued, I find that this is not determinative of whether the information contained in the record at issue qualifies as employment history.

5. I find that the disclosure of the personal information contained in the record at issue would constitute an unjustified invasion of the personal privacy of the listed employees and that it is, accordingly, exempt under section 49(b) of the Act.

**ORDER:**

1. I order the Ministry to disclose to the appellant his own personal information which is contained in the record by forwarding a copy to him by **March 1, 1996**.
2. I uphold the Ministry's decision to deny access to the start dates of the other employees.
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 1.

Original signed by: \_\_\_\_\_

Donald Hale  
Inquiry Officer

February 15, 1996