



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

# **ORDER P-1219**

**Appeal P-9500717**

**Management Board Secretariat**



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## **NATURE OF THE APPEAL:**

Management Board Secretariat (the Secretariat) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records pertaining to a Secretariat investigation into a complaint made against the requester regarding his behaviour in the workplace. The requester specifically sought access to notes taken by three named individuals and any manager in his department. The Secretariat identified the responsive records and granted partial access. The Secretariat denied access to three pages of handwritten notes on the basis that disclosure would constitute an unjustified invasion of the personal privacy of other individuals under sections 21(1) and 49(b) of the Act. The requester appealed the denial of access.

The appellant is a former employee of the Secretariat. The record consists of three pages of handwritten notes of a meeting which took place regarding a complaint made by another employee (the complainant) about the appellant. The notes were recorded by one of the four people present.

A Notice of Inquiry was provided by this office to the appellant, the Secretariat, the complainant and another individual identified in the record. Representations were received from the Secretariat only.

## **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 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 information in the record and, in my view, it relates to the appellant and other identifiable individuals, including the complainant.

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(b) provides an exception 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 Secretariat determines that the disclosure of the information would constitute an unjustified invasion of the other individuals’ personal privacy, the Secretariat 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 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 Secretariat 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 Secretariat submits that the factors in sections 21(2)(f) and (h) apply in the circumstances of this appeal. These sections read as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

The Secretariat states that the meeting was arranged with the complainant in an attempt to resolve any issues informally without having to proceed with an investigation. The Secretariat states that in such circumstances, it is particularly important for an employer to be able to conduct informal discussions with employees in an uninhibited environment and the employees must be able to speak candidly and with some assurances of confidentiality. The Secretariat points out that the information which has already been disclosed to the appellant does include the nature and substance of the complaint and the issues raised by the complainant. The Secretariat submits that the information which remains at issue describes the complainant's feelings and experiences, is highly sensitive and was provided in confidence by the individual to whom it relates.

As I have indicated previously, the appellant has not provided any representations.

I have reviewed the record together with the representations of the Secretariat. With respect to section 21(2)(h), I find that there is not sufficient evidence to show that the information was provided in confidence. However, I find that the information in the record can be characterized as "highly sensitive" for the purposes of section 21(2)(f). Having considered all the circumstances of this appeal and having balanced the appellant's right to access his personal information against the other individuals' right to protection of their personal privacy, I find that the disclosure of the personal information in the record would constitute an unjustified invasion of personal privacy and the record is exempt under section 49(b) of the Act.

## **ORDER:**

I uphold the decision of the Secretariat.

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

July 4, 1996

Mumtaz Jiwan  
Inquiry Officer