



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

# **ORDER P-1236**

**Appeal P-9600104**

**Ministry of Citizenship, Culture and Recreation**



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## **NATURE OF THE APPEAL:**

The appellant 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 request was for access to a copy of the jobsOntario Community Action Fund (JOCA) application filed by a named non-profit organization (the Organization).

The Ministry identified the record responsive to the request and, pursuant to section 28 of the Act, notified the Organization of the request. The Organization objected to the disclosure of any information in the application. The objection was based on the claims that the application contained third party information and that disclosure would constitute an unjustified invasion of personal privacy. These exemptions are found respectively in sections 17(1) and 21(1) of the Act.

The Ministry responded to the Organization by reminding it that, under the Terms and Conditions of the application which it had signed, it had consented to the release of the information contained in the application pursuant to section 17(3) of the Act. This section gives the Ministry the discretion to disclose information if the party to whom it relates consents to the disclosure.

Nonetheless, the Ministry indicated that it would grant only partial access to the requested record. The Ministry denied access to parts of the record pursuant to sections 21 and 17 of the Act. The Organization filed a third party appeal, objecting to the partial disclosure. Following settlement of that appeal, the appellant was notified of the decision of the Ministry to grant partial access. The appellant filed an appeal of that decision. It is this appeal which is at issue in this order.

During mediation, the appellant narrowed the scope of the records in issue, stating that he did not wish to receive personal addresses or telephone numbers or resume-type information. A Notice of Inquiry was sent to the Ministry, the appellant, the Organization and ten other parties whose interests could be affected by disclosure of some of the information (the affected parties). Representations were received from the Ministry, the appellant, the Organization and two of the affected parties. One of the affected parties consented to the disclosure of its information. Another provided a limited consent.

In its representations, the Ministry indicates that it is taking no position on the disclosure of any of the information at issue with the exception of that found on one page of the record, page 11A.3. I will refer to this submission at the appropriate time.

The records at issue in this appeal and the exemptions claimed by the Ministry are described in Appendix "A" to this order.

## **DISCUSSION:**

### **PRELIMINARY ISSUE**

In its submissions, the Organization provides some information concerning its belief as to the identity of the appellant and his reasons for requesting the information. The Organization states:

We respectfully maintain that the appellant's request of this information is deemed to be vexatious and thus should not be disclosed to the requester pursuant to section 10(2) of the Act.

The determination of whether a request is frivolous or vexatious rests with the head of an institution under section 24(1.1) of the Act. In this case, the head of the Ministry has not made this claim and has proceeded to process the request in the usual manner. In these circumstances, and on the basis of mere "suspicions" on the part of the Organization as to how the appellant intends to use the information requested, I will not consider these claims of the Organization further in this order.

### **INVASION OF PRIVACY**

The Ministry has not disclosed portions of pages 2.2, 5.5, 9C.4, 11A.3, 11A.4 and 11B.12 on the basis that to do so would constitute an unjustified invasion of personal privacy.

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including information relating to the ethnic origin of 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 information at issue and conclude that the pages above contain personal information as defined, except for pages 2.2, 9C.4 and the amount on page 11A.4. Record 2.2 is a list of the Board of Directors of the Organization containing names and professions of the Board members. The identity of these individuals has already been disclosed to the appellant as page 2.1 of the record. I am of the view that the information on page 2.2, appearing as it does in the context of the Board of Directors of a corporation, does not constitute the personal information of these individuals. Therefore, section 21(1) of the Act cannot apply to this information and it should be disclosed to the appellant.

The information on page 9C.4 lists the proposed salaries for various positions within the Organization. However, there are no names associated with these positions. Accordingly, the salary figures are not information about "identifiable" individuals. The amount on page 11A.4 refers to a donation made by a corporation and does not constitute personal information. Therefore, as the information at issue on page 9C.4 and the amount in page 11A.4 are not personal information their disclosure cannot constitute an unjustified invasion of privacy under section 21(1) of the Act and therefore should be disclosed to the appellant.

There is no personal information of the appellant at issue in this appeal.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the 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 in the particular case.

The persons whose names are severed on page 5.5 are identified as representatives of community leaders and organizers who have publicly written and spoken about community issues and are, therefore, known generally in that capacity. I am of the view that no presumption of unjustified invasion of privacy applies to the names. Nor can I find any circumstances outlined in section 21(2) which would apply. I am, therefore, of the opinion, that disclosure of the information on page 5.5 would not constitute an unjustified invasion of the personal privacy of these named individuals.

The Ministry has submitted that disclosure of the amount on page 11A.3 would constitute a presumed invasion of privacy under section 21(3)(f) of the Act, as it describes an individual's financial activities. In Order P-267, it was found that amounts given for political party contributions by named individuals were exempt under this section; however, an amount for which a receipt was issued was found not to be an invasion in that it was publicly available information. That is not the case here, and I find that this amount falls within the presumption.

In my view, the remainder of the information withheld on page 11A.4, as well as the severed information in record 11B.12, indicate an individual's ethnic origin and disclosure of this information would constitute an unjustified invasion of personal privacy under the presumption contained in section 21(3)(h).

None of the personal information which I have found to fall within section 21(3) falls within the ambit of section 21(4) of the Act. Nor has the appellant maintained that there is a public interest in the disclosure of this information under section 23 of the Act. Accordingly, I find that the presumptions in sections 21(3)(d), (f) and (h) have not been rebutted. To disclose the information falling within these presumptions would result in an unjustified invasion of personal privacy under section 21(1) of the Act.

To summarize, I find that the information which has been withheld on pages 2.2, 5.5 and 9C.4, and the amount on page 11A.4 are not exempt from disclosure. I find that the information on page 11A.3, the remainder of the severed information on page 11A.4, and page 11B.12 should not be released.

### **THIRD PARTY INFORMATION**

One of the affected parties has consented to disclosure of its information, and therefore pages 7D.4, 7D.17 to .35 inclusive and the parts of 7D.5 and .6 relating to it are to be disclosed. Another affected party consented to the release of one severance concerning page 7D.7.

The pages remaining to be considered are the following: 7D.1 to .3 and .5 to .16, and 7F.4 to .6, inclusive.

Section 17(1) of the Act states, in part:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

The affected parties and/or the Ministry must provide sufficient evidence to establish that the records contain the requisite type of information, were supplied to the Ministry in confidence and that one of the harms in sections 17(1)(a), (b) or (c) could reasonably be expected to occur upon disclosure of the record.

### **Records 7D.1 to .3 and 7D.5 to .16**

I have reviewed the information, and I find that all of these records contain commercial information of the affected parties. I also find that the information was supplied to the Ministry. I have received no representations from the Ministry or any of the affected parties concerning the application of this section. The Organization, in its representations, submits that the information was provided to its development consultant in confidence, and that it had no consent to release the information. The Organization does not explain who provided the information to the consultant and the relationship between the consultant and the Ministry.

The appellant has submitted that the site location was never intended to be treated confidentially, as it was discussed and shown during an interview on local television. However, there is no indication as to what information was provided on the television program.

The application itself contained the following clause:

11. Consent to Release

The Applicant/Recipient consents to the release of information contained in its Application ... pursuant to subsection 17(3) of the Freedom of Information and Protection of Privacy Act.

After the Terms and Conditions section, the application contains a printed "Statement by the Applicant" in which the following is declared: "I understand that the information in this application may be subject to disclosure under provincial Freedom of Information legislation." After the statement, the application is then signed by the applicant.

In view of the "Consent to Release" and the "Statement by the Applicant", I find it difficult to conclude that the information contained in the application was provided in confidence, either explicitly or implicitly. However, as much of the information contained in the application relates to the affected parties as opposed to the Organization, it is possible that the other parties may not have been aware of the consent to release signed by the Organization as a term of the application. That is why these parties were notified of this appeal.

Nonetheless, even if I were to accept that the information was supplied in confidence, I must also find that disclosure could reasonably be expected to result in one of the harms outlined in section 17(1)(a), (b), or (c) of the Act. The Organization submits that release of the information would jeopardize the realization of the project and would interfere with and impede the contractor and consultant in providing their services to the organization. In the absence of representations from the Ministry and the affected parties themselves, the Organization's statement provides insufficient evidence on which I can conclude that disclosure of this information could reasonably be expected to result in one of the harms set out in sections 17(1)(a), (b) or (c). I, therefore, find that none of this information is exempt.

### **Records 7F.4 to .6**

From my review of the records, I find that the severed information is financial information. The representations which the Organization provided concerning section 17 appear to apply to all records for which that section was claimed. These particular records pertain to the costing of the proposed project of the Organization, and on their face do not involve other parties. I agree that this information was supplied to the Ministry; however, I cannot conclude that it was supplied in confidence, either explicitly or implicitly, in view of the above release.

I find that the second part of the test under section 17(1) has not been met, and, therefore, the information in these pages is not exempt from disclosure.

### **ORDER:**

1. I uphold the decision of the Ministry to deny access to the severed information on page 11A.3, the severed sentence on page 11A.4, and page 11B.12.
2. I order the Ministry to disclose to the appellant the amount on page 11A.4 and pages 2.2, 5.5, 9C.4, 7D.1 to .35 inclusive and 7F.4 to .6 inclusive to the appellant by sending him a copy by **August 28, 1996** but not before **August 23, 1996**.

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 records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_ July 24, 1996  
Anita Fineberg  
Inquiry Officer

## APPENDIX "A"

### INDEX OF RECORDS AT ISSUE

PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD	EXEMPTION CLAIMED	DECISION ON RECORD
2.2	Board of Directors of organization	21	Disclose
5.5	"Response to Community Priority ..."	21	Disclose
7D.1 to .3	"Land Site"	17	Disclose
7D.4	"Land Site" continued	17	Disclose
7D.5 to .6	"Proposal Call"	17	Disclose
7D.7	"Site Search"	17	Disclose
7D.8	Fax Transmittal	17	Disclose
7D.9	"Site Plan Options"	17	Disclose
7D.10 to .15	Site plans	17	Disclose
7D.16	Site statistics for one site	17	Disclose
7D.17 to .35	Information concerning one site including graph development analyses	17	Disclose
7F.4 to .6	Information concerning proposed community centre	17	Disclose
9C.4	"Schedule of Administrative and Overhead Expenses: Phase 1" of organization	21	Disclose
11A.3	Letter, Nov. 15, 19[95?], amount only	21	Deny
11A.4	Letter, Feb. 28, 1995	21	Disclose amount, deny remainder
11B.12	Letter, March 2, 1995	21	Deny