



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

# ORDER P-1366

Appeal P\_9600432

Ministry of the Attorney General



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/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for the following information:

- a letter from a named individual respecting the appellant
- any other letters from other sources about the appellant
- any responses to the correspondence requested above

The Ministry located several records responsive to the first part of the request, and denied access to them under both the invasion of privacy exemption contained in section 49(b) of the Act and section 22(a) of the Act, which exempts from disclosure information which is publicly available.

The appellant appealed the Ministry's decision. During the mediation of the appeal, the Ministry provided the appellant with additional records responsive to parts two and three of the request. In addition, the scope of the appeal was narrowed by the appellant to include only the application of the invasion of privacy exemptions to three letters, dated March 19, 1996, November 23 and November 28, 1995.

A Notice of Inquiry was provided by this office to the appellant, the Ministry and another individual whose interests may be affected by the disclosure of the records to the appellant (the affected person). Representations were received from the Ministry and the affected person.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records and find that the letter dated March 19, 1996 contains only the personal information of the affected person. The other letters, dated November 23 and 28, 1995, contain the personal information of the appellant and the affected person.

### **INVASION OF PRIVACY**

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 49 sets out exceptions to this general right of access.

Where a record, as is the case with the November 1995 letters, contains the personal information of both the appellant and other individuals, section 49(b) of the Act allows the Ministry to withhold information from the record if it determines that disclosing the information would constitute an unjustified invasion of personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Where, however, the record only contains the personal information of another individual, as is the case with the March 19, 1996 letter, and the release of this information would constitute an unjustified invasion of the personal privacy of this individual, section 21(1) of the Act prohibits the Ministry from disclosing this information.

In both these situations, sections 21(2), (3) and (4) provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the Ministry can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it. If none of the presumptions in section 21(3) apply, the Ministry must consider the factors listed in section 21(2), as well as other relevant circumstances.

The Ministry submits that the consideration favouring the non-disclosure of the information which is listed in section 21(2)(h) (supplied in confidence) applies to the records. It argues that the affected person supplied the information to the Ministry with an expectation of confidentiality. For this reason, the Ministry is of the view that the disclosure of the personal information contained in all three records would constitute an unjustified invasion of the personal privacy of the affected person.

Similarly, the affected person submits that the records were provided to the Ministry in confidence.

In my view, the affected person and the Ministry have established that the records were supplied to the Ministry with an expectation of confidentiality within the meaning of section 21(2)(h). I find, therefore, that this is an important consideration favouring the protection of the privacy of the affected person.

As noted above, the appellant has not submitted any written representations in response to the Notice of Inquiry. He did, however, indicate verbally to the Appeals Officer that he ought to be entitled to any information about himself which is held by the Ministry in order to ensure that any inaccuracies contained in the records are corrected.

In the absence of any submissions from the appellant with respect to the April 19, 1996 record, I find that its disclosure would result in an unjustified invasion of the personal privacy of the affected person. Section 21(4) does not apply and the appellant has not made reference to the application of section 23. This document is, accordingly, exempt under section 21(1).

With respect to the November 1995 letters, I must balance the appellant's right of access against the affected person's right to privacy. In doing so, I find that the factors favouring privacy protection outweigh any considerations referred to by the appellant which favour disclosure. Accordingly, I find that the disclosure of this information would result in an unjustified invasion of the personal privacy of the affected person. Again, section 21(4) does not apply and the appellant has not raised the possible application of section 23. The November 1995 letters are, therefore, exempt from disclosure under section 49(b).

## **ORDER:**

I uphold the Ministry's decision to deny access to the records.

Original signed by: \_\_\_\_\_ March 12, 1997  
Donald Hale  
Inquiry Officer