



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

ORDER P-1331

Appeal P_9600371

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) for a copy of a certain transcript of “examination” of a named individual.

The Ministry recently received another request for the identical record, Appeal Number P_9600307 which was resolved by my Order P-1310. In processing that request, the Ministry determined that the interests of a third party (the affected person) could be affected by disclosure of the record. The Ministry notified the affected person pursuant to section 28 of the Act, and requested comments on disclosure of the record. The affected person objected to the disclosure of the record. The Ministry therefore denied access to the record on the basis of sections 21 (invasion of privacy) and 19 (solicitor-client privilege). In response to the second request which has resulted in the subject appeal, the Ministry also denied access to the record pursuant to sections 19 and 21 of the Act.

The requester (now the appellant) appealed the denial of access. The appellant, who is a member of the media, claimed that there was a compelling public interest in the disclosure of the record pursuant to section 23 of the Act and that the Ministry’s decision letter failed to satisfy the requirements of section 29(1)(b)(ii) of the Act.

This office sent a Notice of Inquiry to the appellant, the Ministry and the affected person. Representations were received from all three parties.

PRELIMINARY ISSUE:

THE ADEQUACY OF THE MINISTRY’S DECISION LETTER

The appellant submits that the contents of the Ministry’s decision letter do not comply with the requirements of section 29(1)(b) of the Act. Specifically, he states that the Ministry has failed to state which provisions under both sections 19 and 21 of the Act the Ministry is relying on to deny access to the record and the reasons why these provisions apply.

The Ministry, on the other hand, argues that the reasons for denying access were specifically laid out in its decision letter and that no further details could have been provided to the appellant.

Section 29(1)(b) of the Act specifies that the notice of refusal to provide access (which is contained in an institution’s decision letter) must include the specific section of the Act under which access is refused, the reason that the provision applies to the record, the name and position of the person who has made this decision, and the fact that the requester may appeal this decision to the Commissioner’s office.

I have carefully reviewed the decision letter which the Ministry issued to the appellant. I note that the decision letter contains the sections relied upon to deny access and the name and position

of the individual who made the decision. The Ministry has also advised the appellant of his/her right to appeal the decision.

In my view, the decision letter was deficient in that it failed to describe in sufficient detail the relationship between the record and the particular sections of the exemptions claimed. A requester is entitled to be provided with sufficient information to enable him or her to make an informed decision as to whether or not to appeal the decision to the Commissioner's office. I find that in the circumstances of this appeal, the Ministry's decision letter did not fully comply with the requirements of section 29(1)(b).

However, in my view, no useful purpose would be served by requiring the Ministry to issue a revised decision letter.

I would, however, encourage Ministry staff to review the June 1992 edition of "IPC Practices" published by the Commissioner's office. This document outlines the proper requirements for a decision letter under the Act.

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 record at issue in this appeal and find that it contains information about the affected person, as well as other individuals mentioned in the record.

The appellant states that the information relates to the affected person and others who were acting in the capacity of fund-raisers or agents on behalf of an organization. The appellant asserts that, on that basis, the information cannot qualify as "personal information".

In my view, information about an individual does not constitute that individual's personal information where the information relates to the individual's employment responsibilities or position. Where, however, the information involves an evaluation of the individual's conduct, these references are considered to be the individual's personal information. In this case, the information relates to the affected person and his conduct and actions. Therefore, I find that the information contained in this record falls within the definition of personal information found in section 2(1) of the Act.

The record does not contain any personal information which relates to the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information to any person other than the individual to whom the information relates, except in certain circumstances listed under the section. In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure 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 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 that are relevant in the circumstances of the case.

The Ministry submits that the personal information contained in the record describes the personal finances, income, assets, liabilities, net worth and financial history of the affected person and also contains information about the religious or political beliefs or associations of the affected person and other identifiable individuals. Therefore, the Ministry submits that disclosure of the record would constitute a presumed unjustified invasion of personal privacy under the presumptions contained in sections 21(3)(f) and (h) of the Act. The Ministry submits also that the information contained in the record is extremely sensitive and therefore section 21(2)(f), which weighs in favour of privacy protection, is a relevant consideration.

The affected person states that disclosure of the record would “unfairly damage the reputation of any person referred to in the record” (section 21(2)(i)). This factor weighs in favour of privacy protection.

The appellant submits that disclosure of the record could not result in an unjustified invasion of personal privacy as the affected person conducted his fund-raising campaign by appealing for funds on a publicly licensed radio station.

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

- (1) the information in the record relates to monies collected and disbursed by an individual for the purpose of fund-raising for an organization. However, this information is also intrinsically related to the individual's finances, income, assets, liabilities, net worth and financial history. I find, therefore, this information qualifies for exemption under the presumption in section 21(3)(f) of the Act.
- (2) some parts of the record contain information about the ethnic origin or religious beliefs of the affected person and other identifiable individuals. I find that this information falls within the presumption found in section 21(3)(h) of the Act.

- (3) I accept the appellant's argument that the fundraising activities of the affected person were conducted on a publicly licensed radio station and this is a relevant consideration which weighs in favour of disclosure.
- (4) I have not been provided with evidence that disclosure of the record would **unfairly** damage the affected person's reputation and, therefore, while I accept that section 21(2)(i) is a relevant consideration, I am unable to assign much weight to it.
- (4) I find that the information in the record overall can be characterized as "highly sensitive" in that disclosure would result in distress to the affected person and other identifiable individuals. I find therefore that section 21(2)(f), which weighs in favour of privacy, is a relevant consideration.

In summary, I find that part of the record falls within the presumptions found in sections 21(3)(f) and (h) and that information is exempt from disclosure under section 21(1). I find that section 21(4) has no application in the circumstances of this appeal. In weighing the appellant's rights of access to the remaining information against the affected person's right to privacy protection, I find that disclosure of the remaining information would constitute an unjustified invasion of personal privacy and the exception in section 21(1)(f) does not apply. I find that the record is exempt under section 21(1) of the Act.

PUBLIC INTEREST IN DISCLOSURE

The appellant submits that a compelling public interest exists in the disclosure of the record,

Section 23 of the Act states:

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)

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a compelling **public** interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

In its representations, the Ministry argues that there is no compelling public interest in the disclosure of the record at issue. Alternatively, the Ministry states that the Office of the Public Guardian and Trustee became involved in this matter in order to protect the "general charitable interest".

The appellant submits that a substantial amount of money was raised publicly for a charitable purpose and a portion of the funds has yet to be accounted for. He argues that a public interest exists in that the people who contributed to the fund have a right to know how these monies were disbursed.

I have carefully reviewed all the representations, as well as the record at issue in this appeal. In so doing, I am aware that as a result of concerns similar to those raised by the appellant, the Public Guardian and Trustee became involved in the investigation and the eventual resolution of this matter. In my view, any public interest that may have existed has already been served by the involvement of the Public Guardian and Trustee. Therefore, I am not convinced that there is a compelling public interest in the disclosure of the record at issue sufficient to outweigh the purpose of the exemption under section 21. Accordingly, I find that section 23 of the Act does not apply in the circumstances of this appeal.

Because of the manner in which I have disposed of this issue, it is not necessary for me to address the application of section 19 of the Act to the record.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

January 17, 1997