



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1521

Appeal P-9700339

Ministry of Labour



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 appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Labour (the Ministry). The request was for access to the handwritten notes and a completed Employment Standards form contained in the file of an individual (the complainant) who had filed a complaint with the Ministry's Employment Standards Branch against the appellant. The request was subsequently clarified to include all records concerning the complainant's employment standards claim.

The Ministry granted partial access to the records it identified as responsive to the request, claiming the application of the invasion of privacy exemption found in section 21 of the Act to deny access to the remainder. The Ministry also provided the appellant with copies of two orders issued by this office (P-990 and P-1216) dealing with records relating to claims under the Employment Standards Act. The appellant appealed the Ministry's decision.

During the course of the appeal, the appellant's representative advised this office that the nineteen dollar (\$19.00) fee imposed by the Ministry and the "Book of Documents" referred to in the Ministry's October 30, 1997 decision are not at issue in this appeal.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties.

RECORDS:

The records remaining at issue consist of 32 pages and include handwritten notes by the complainant and Ministry staff, correspondence, employment and medical documentation and a completed Employment Standards Program claim form.

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 have reviewed the information in the records and I find that it satisfies the definition of "personal information" in section 2(1) of the Act. The personal information relates to the complainant.

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 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 Ministry 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 circumstances of the case.

The Ministry submits that disclosure of the information in the records would give rise to a presumed unjustified invasion of personal privacy on the basis of sections 21(3)(b) and (d) of the Act. These sections state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (d) relates to employment or educational history.

With respect to section 21(3)(b), the Ministry submits that the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law under the Employment Standards Act. The Ministry explains that all of the records at issue were either supplied to the Employment Standards Officer by the complainant's counsel or prepared by the Officer in the course of investigating the complainant's claim.

The appellant maintains that disclosure of the information is relevant to a fair determination of her client's rights in defending the complainant's wrongful dismissal claim (section 21(2)(d) of the Act).

I have reviewed the representations of the parties together with the information in the records and I make the following findings:

- (1) The personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law, i.e. the Employment Standards Act. Accordingly, the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b) of the Act.
- (2) The consideration raised by the appellant in section 21(2)(d) of the Act cannot rebut the presumption in section 21(3)(b) (Order M-170).
- (3) Section 21(4) does not apply to the information and the appellant has not raised the possible application of section 23 of the Act.
- (4) Accordingly, I find that disclosure of the personal information which has been withheld would constitute an unjustified invasion of personal privacy of the complainant and is properly exempt under section 21(1) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ January 27, 1998