

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3795

Appeal PA15-477-2

Ministry of Finance

December 13, 2017

Summary: A request was submitted to the Ministry of Finance (ministry) under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for access to specific information in relation to meetings involving executive staff from the Deposit Insurance Corporation of Ontario and various ministry staff.

The ministry withheld the names of certain individuals in the records, citing the mandatory personal privacy exemption in section 21(1). This order upholds the ministry's decision that the information at issue is exempt under this exemption. It also finds that the ministry's search for records was reasonable and upholds its search.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1)(h) (definition of personal information), 2(3), 21(3)(d), 21(4)(a), 24.

OVERVIEW:

[1] A request was submitted to the Ministry of Finance (MOF or the ministry) under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for access to the following information in relation to meetings involving executive staff from the Deposit Insurance Corporation of Ontario (DICO) and various ministry staff:

...all meeting materials, including meeting agendas, materials discussed, minutes of all such meetings and any notes taken by the MOF participants

relating to the following matters for all such meetings where [the requester] was not in attendance held between January 1, 2014 and June 30, 2015:

- DICO - Staffing Changes: any items concerning DICO's organization changes addressed at the subject meeting.
- DICO/MOF - Bill 8 / Public Sector Executive Compensation Act: all matters discussed including materials provided/tabled at each meeting together with any notes taken by any of the MOF participants.
- MOF - All agenda items attributed to MOF: all matters discussed including materials provided/tabled at each meeting together with any notes taken by any of the MOF participants.

[2] The ministry granted partial access to the responsive records with severances pursuant to the mandatory personal privacy exemption in section 21(1) of the *Act*. Some of the information contained in the records was withheld as it was deemed to be not responsive to the request.

[3] The requester, now the appellant, appealed the ministry's decision.

[4] During the course of mediation, the appellant advised the mediator that he was pursuing access to the withheld information contained within the records and is of the view that additional responsive records should exist, including notes from ministry staff.

[5] As mediation did not resolve this appeal, the file was transferred to adjudication where an adjudicator conducts an inquiry.

[6] In accordance with the IPC's *Practice Direction 7*, representations were sought and exchanged between the ministry and the appellant and from two affected persons whose personal information may be contained in the records.

[7] Both affected persons objected to disclosure of their personal information in the records.

[8] In this order, I uphold the ministry's decision that the information at issue is exempt by reason of the mandatory personal privacy exemption in section 21(1). I also find that the ministry's search for records was reasonable and uphold its search.

RECORDS:

[9] There are four records at issue in this appeal consisting of the withheld portions of meeting notes and agendas.

ISSUES:

- A. Do parts of Records 1, 3 and 4 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?
- C. What is the scope of the request? What records are responsive to the request?
- D. Did the ministry conduct a reasonable search for records?

DISCUSSION:

A. Do parts of Records 1, 3 and 4 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[10] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and

replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) 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;

[11] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.¹

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.²

[13] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.³

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[15] The ministry states that four sections of the records redacted under section 21(1) are the names of individuals other than the appellant. This information was redacted because it falls under part (h) of the definition of "personal information" in section 2(1) as its disclosure "would reveal other personal information about the individual" – namely information about those individuals' employment history as per part (b) of the definition of personal information.

[16] The appellant submits that it appears that a part of the redacted information consists of the person's name and title and is not personal information by reason of section 2(3).

Analysis/Findings

[17] I agree with the ministry that Records 1, 3 and 4 contain personal information of

¹ Order 11.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

individuals other than the appellant.

[18] The ministry has disclosed details of named employees' (the affected persons) employment history, but has withheld their names.

[19] The appellant relies on section 2(3), which reads:

Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[20] The only personal information withheld from the records is that which identifies who the affected persons are. The rest of the information about the affected persons has been disclosed. Disclosure of the affected persons' names will reveal something personal about them, namely their employment history.

[21] I agree with the ministry that the personal information at issue in the record is information that comes within paragraph (h) of the definition of personal information in section 2(1).

[22] I will now consider whether the mandatory personal privacy exemption in section 21(1) applies to exempt the personal information at issue in the records.

B. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

[23] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[24] If the information fits within any of the exceptions to section 21 in paragraphs (a) to (e) of section 21(1) or paragraphs (a) to (d) of section 21(4), it is not exempt from disclosure. In this appeal, the information does not fit within these paragraphs.

[25] Under section 21(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[26] The section 21(1)(f) exception, which allows disclosure if it would not be an unjustified invasion of personal privacy, requires a consideration of additional parts of section 21.

[27] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy.

[28] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section

21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.⁵

[29] The ministry relies on the presumption in section 21(3)(d), and submits that disclosure of the personal information is presumed to constitute an unjustified invasion of personal privacy as it relates to employment history.

[30] The ministry states that all of the severed information is information about the employment history of an individual, since it discloses start or end dates of employment, years of service, or the last day worked by the affected persons.

[31] The appellant states that only employment history, such as a date of retirement and years of service, and not the surrounding text, should be redacted from the records under section 21(3)(d). He also submits that the exception in 21(4)(a) applies as the redacted information includes employment responsibilities.

Analysis/Findings

[32] The ministry has provided a detailed description of the severed information at issue in Records 1, 3 and 4, which are notes from the same meeting, as follows:

- The first severed portion in Record 1, and the severed portions of Records 3 and 4 are essentially the same severance three times. In each case, the redacted name is a reference to an employee who, according to the meeting notes, was retiring after a specified number of years of service.
- Record 3 clearly indicates how many years of service the named individual had.
- Record 4 does not directly reveal any of this information. However, failure to sever the individual's name would have the effect of revealing the identity of the named individual, and therefore connect the information in Records 1 and 3 to the named individual.
- The second severed portion in Record 1 is a different name and the disclosed information is that [name] "will replace him", with "him" being the individual identified in the other records. This is information about the employment history of an individual, since it indicates that the second named individual was changing roles to replace the first named individual and the start date of this individual's employment and the name of the first individual can be inferred.

[33] Information which reveals the dates on which former employees are eligible for early retirement, the start and end dates of employment, the number of years of

⁵ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

service, the last day worked, the dates upon which the period of notice commenced and terminated, the date of earliest retirement, entitlement to and the number of sick leave and annual leave days used and restrictive covenants in which individuals agree not to engage in certain work for a specified duration has been found to fall within the section 21(3)(d) presumption.⁶

[34] Information contained in resumes⁷ and work histories⁸ falls within the scope of section 21(3)(d).

[35] A person's name and professional title, without more, does not constitute "employment history".⁹

[36] In this case, I agree with the ministry that disclosure of the severed names in Records 1, 3, and 4 reveals the start and end dates of employment, the number of years of service, and the last day worked. Accordingly, I find that disclosure of the severed names in Records 1, 3 and 4 would reveal the affected persons' employment history.

[37] Therefore, I find that the presumption in section 21(3)(d) applies to the information at issue in Records 1, 3 and 4.

[38] I have considered the appellant's position that the exception in section 21(4)(a) applies that reads:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;

[39] Based on my review of the information at issue, I find that it does not come within the exception in section 21(4)(a).

[40] As noted above, as section 21(3)(d) applies, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21, which can only be overcome if section 21(4) or the "public interest override" at section 23

⁶ Orders M-173, P-1348, MO-1332, PO-1885 and PO-2050; see also Orders PO-2598, MO-2174 and MO-2344.

⁷ Orders M-7, M-319 and M-1084.

⁸ Orders M-1084 and MO-1257.

⁹ Order P-216.

applies.¹⁰ In this appeal, neither section 21(4) nor 23 apply.

[41] Therefore, the names of the affected persons in Records 1, 3 and 4 are exempt by reason of the mandatory personal privacy exemption in section 21(1).

C. What is the scope of the request? What records are responsive to the request?

[42] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[43] The ministry states that only a few of the records collected were responsive to the appellant's initial request because the meetings were general meetings to keep the ministry and DICO individuals up to date on relevant developments. It states that, as a result, the bulk of the notes taken about the meetings do not pertain to staffing, Bill 8, or agenda items attributable to the ministry.

[44] The ministry states that it corresponded with the appellant regarding the scope of the request and the appellant made it clear that his interest was only in materials relating to him personally.

[45] The appellant states that the ministry's statement that he was solely interested in matters pertaining to him is not correct and that he advised the ministry of this during the mediation stage of this appeal.

Analysis/Findings

[46] Institutions should adopt a liberal interpretation of a request, in order to best

¹⁰ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹¹

[47] To be considered responsive to the request, records must "reasonably relate" to the request.¹²

[48] I find that the appellant's request, as set out above, provided sufficient detail to identify the records responsive to the request. In his request and in his representations, the appellant specifically states that he is only interested in records related to meetings that he was not present at. He also reiterated this point during the mediation stage of this appeal.

[49] Accordingly, I find that the scope of the request is as set out above on pages 1 and 2 of this order.

[50] I have also reviewed the four records at issue in this appeal, Records 1 to 4, and find that the portions of these records marked as non-responsive to the request by the ministry are not responsive.

D. Did the ministry conduct a reasonable search for records?

[51] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.¹³ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[52] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.¹⁴ To be responsive, a record must be "reasonably related" to the request.¹⁵

[53] The ministry provided the affidavit of a Senior Policy Advisor (SPA) at the ministry, who has nine years of experience on DICO-related files and who had personally attended some of the meetings in question, as to the particulars of the search. The SPA states that the meetings subject to the request were informal, therefore no minutes were created and also that individual staff kept their own record of the meeting in the form of personal notes. The ministry states that these personal

¹¹ Orders P-134 and P-880.

¹² Orders P-880 and PO-2661.

¹³ Orders P-85, P-221 and PO-1954-I.

¹⁴ Orders P-624 and PO-2559.

¹⁵ Order PO-2554.

notes were located and disclosed.¹⁶

[54] The SPA further states that there was no discussion of the substantive agenda items by email, and that the only email records that exist are scheduling emails and Outlook calendar invitations, which do not contain information responsive to the request.

[55] The appellant states that it appears that the ministry did not consider what are known as Liaison Committee Meetings, which are held shortly before each DICO board meeting and are attended by DICO executives and the chair, senior ministry staff, the Superintendent of Financial Services and other senior Financial Services Commission of Ontario (FSCO) staff.

[56] The ministry did not provide reply representations on the appellant's submissions that it did not search for Liaison Committee Meetings.

Analysis/Findings

[57] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.¹⁷

[58] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.¹⁸

[59] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.¹⁹

[60] The appellant's request sought information in relation to meetings involving executive staff from DICO and various ministry staff relating to the following three matters:²⁰

1. DICO –Staffing Changes.
2. DICO/MOF – Bill 8 / Public Sector Executive Compensation Act.
3. MOF – All agenda items attributed to MOF.

¹⁶ Subject to the section 21(1) personal privacy exemption severances.

¹⁷ Orders M-909, PO-2469 and PO-2592.

¹⁸ Order MO-2185.

¹⁹ Order MO-2246.

²⁰ For the period of January 1, 2014 until June 30, 2015, for meetings that the appellant was not in attendance at.

[61] As noted above, the appellant has only indicated that the ministry did not locate responsive records of Liaison Committee Meetings, which are held shortly before each DICO board meeting and are attended by DICO executives and chair, senior ministry staff, the Superintendent of Financial Services and other senior FSCO staff.

[62] I find that the appellant has not provided a reasonable basis for me to conclude that the Liaison Committee Meeting minutes he is seeking reasonably relate to his request as set out above and thus fall within the scope of his request. I find that the appellant has not provided a reasonable basis for me to conclude that records responsive to the request in the custody or control of the ministry have not been located.

Based on my review of the ministry's representations, including the affidavit of the SPA, I find that the ministry has conducted a reasonable search for responsive records and I uphold its search for records.

ORDER:

I uphold the ministry's decision and I dismiss the appeal.

Original Signed by: _____
Diane Smith
Adjudicator

December 13, 2017 _____