



FILE NO. - 93/016

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF A REQUEST BY AN APPLICANT  
FOR PERSONAL INFORMATION FROM  
THE DEPARTMENT OF JUSTICE**

The Applicant, an employee for the Department of Justice, applied for personal information about himself with respect to an allegation of harassment and the subsequent investigation by the Human Resources Branch of the Department. In response to his application for information, the Applicant received a letter dated June 3, 1993 from the Department which states in part:

"Your application for access to all records relating to the investigation of harassment filed against yourself has been processed.

The Human Resources Branch of the Department of Justice has investigated and prepared a report regarding the above complaint. However, in accordance with Section 8 of *The Freedom of Information and Protection of Privacy Act* some of the information contained in this record has been deleted because the information is the personal information of individuals other than yourself. These exemptions are provided for in Section 29(1) of the Act.

I have reviewed the documents in question, including all portions which were deleted by the Department. It appears to me that most of these deletions are "personal information" about the Applicant. The definition of "personal information" in the Act provides in part:

"24(1) Subject to subsection (2) "personal information" means personal information about an identifiable individual that is recorded in any form and includes:

- (f) The personal opinions or views of the individual except where they are about another individual;
- (g) The views or opinions of another individual with respect to the individual;"

In addition, for the purpose of this review regard must be had to Section 24(2)(c) which provides that "personal information" does not include:

- "(c) The personal opinions or views of an individual employed by a government institution given in the course of employment other than personal opinions or views with respect to another individual."

The request for information of the Applicant was made pursuant to Section 31(1) which provides:

"Subject to Part III and subsection (2) an individual whose personal information is contained in a record in the possession or under control of a government institution has a right to, and:

- (a) On an application made in accordance with Part II, and;
  - (b) On giving sufficient proof of identity;
- shall be given access to the record."

In discussing this matter with the Department, I have been advised by their solicitor that no claim for exemption is made except for information which is "personal information" within the meaning of the Act.

The problem which arises is that information which is personal information about the Applicant, may also be personal information about another individual. It should be noted that

in this case all the individuals concerned are employees of a government institution and come within Section 24(2)(c).

Under Section 24(1)(f) personal opinions of the individual expressing them are "personal information" of that individual unless they are about another individual.

Under Section 24(1)(h) the opinion of another individual "with respect to the individual" is personal information apparently of the individual expressing the opinion.

In the course of this review it became apparent that certain information was personal information about the Applicant, to which he is said to be entitled, but is also personal information about other individuals. This appears to be an inherent conflict in the provision of the Act which may require an amendment to resolve.<sup>1</sup> In the meantime in this report I have not recommended that the department should disclose information that qualifies as personal information of another individual to the Applicant even though it may also be considered personal information about him.

The exemptions claimed by the Department are contained in two documents, the first of which is entitled "██████████ - Summary of Interview" consisting of three pages. An exemption was claimed and a deletion made with respect to the second and third paragraphs of page 1. On examination, these two paragraphs appear to me to be purely factual and to be

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<sup>1</sup>For example the *Ontario Freedom of Information & Privacies Act* contains an express provision in Section 49(b) that:

"A head may refuse to disclose to the individual to whom the information relates personal information,

(b) Where the disclosure would constitute an unjustified invasion of another individual's personal privacy."

information about the Applicant and about the investigation of the Applicant but do not contain personal opinions of another person about him or about anyone else. I can see no reason for this exclusion.

The entire third page of this document was also excluded. In my view the first paragraph on this page ought not to be excluded since it refers to a statement regarding working conditions in the Applicant's unit but does not include an opinion of one individual about another individual.

As to the remainder of this page, it appears to me that this deletion was properly made since it refers to an incident relating to an individual other than the Applicant and has nothing to do with the Applicant, and accordingly could not be considered responsive to his request.

The second document is entitled "Allegations made by [REDACTED] - Regina Correctional Centre". In this document the first two paragraphs have been deleted. These two paragraphs are identical to the first two paragraphs of the previous document and for similar reasons should not be deleted.

The entire second page has been deleted except for the first sentence and the third from last paragraph. I can see no basis for this exclusion except with respect to the last sentence on the page in which the opinion of one employee is expressed about another and is therefore personal information under Section 24(1)(h) and is not within the exclusion provided for in 24(2)(c). The rest of the page consists of a description of various incidents which occurred involving the Applicant or involving the allegation of harassment against him.

On page 3, two sentences are deleted which appear to me to be purely factual, for which I can find no basis for exclusion.

On page 5, the last three paragraphs have been deleted. Again, I can find no basis for this exclusion since the matters referred to, except for the last sentence in the third paragraph, are factual in nature. The last sentence however, may properly be deleted as it includes an opinion of one individual about another.

The first three paragraphs on page 6 have been deleted, but again I am unable to find any support for this deletion. The portions excluded relate to the Applicant and the conduct of the Applicant. They consist of personal information about the Applicant which he is entitled to have in the absence of some exception under the Act.

One half of page 8 and all of page 9 have been deleted. This consists of a summary of an interview which the investigators had with the Acting Deputy Director of Security and the Deputy Director of Programs at the institution where the Applicant was employed. It was submitted to me by counsel for the Department of Justice that this information was "personal information" within the meaning of the Act because it was information provided to the investigators by the two officials I have mentioned. It seems to me that there are two reasons why this exemption is not valid:

- (a) I do not consider the information provided by these two officials to be "personal information" about themselves. In my view, it does not become personal information about themselves merely because they supplied it to the investigator. The provisions of Section 24(1) refer to "...personal information about an identifiable

individual..." It is personal information about the Applicant not about the informants.

- (b) Even if the information would otherwise be regarded as "personal information" it comes within subsection 24(2)(c) of the Act, and is not to be treated as personal information.

The deletion on page 10 appears to be a proper one. This deletion is with respect to information about an individual other than the Applicant and is properly excluded as personal information about a third party and is, in any event, not responsive to the request of the Applicant.

I am unable to find a sufficient basis for the exclusion of pages 11, 12 and 13. The first paragraph of page 11 consists of a record of a statement made by [REDACTED] [REDACTED] that another employee working with the Applicant had found the working relationship to be unacceptable. The remainder of these three pages consists of a report of the interview with that employee by the investigators. For the reasons which I have already given with respect to the report of the investigators with respect to other employees, I am unable to find any reason to substantiate the claim of the Department that this is personal information about the employee in question. Rather, it is personal information about the Applicant and he is entitled to have it.

The final two pages of this report are headed "Summary of Investigation" (pages 14 and 15). I can find no basis for exempting the deletions on these two pages. They consist of a summary of the facts pertaining to the conduct of the Applicant and the conclusions reached by the investigators with respect to the allegations made against the Applicant. None of this information can be described as personal information about

anyone except the Applicant. The suggestion by the Department that this is personal information about persons other than the Applicant does not appear to be valid, as in addition to other reasons which I have previously elucidated, I do not think that the conclusions of an investigatory body can be characterized as the views of or opinions of an individual about another individual.

In the result, I recommend that the information which I have outlined above be provided by the Department to the Applicant.

Dated at Regina, Saskatchewan this 28<sup>th</sup> day of September, 1993.

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**Derril G. McLeod, Q.C.,  
Commissioner of Information and  
Privacy for Saskatchewan**