Court File No.: 524/90
Date: December 4, 1991

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)
(DIVISIONAL COURT)

CALLAGHAN C.J.O.C., O'BRIEN AND ROSENBERG JJ.

APPLICATION UNDER the Judicial Review Procedure Act, R.S.O. 1980, c. 224 and Rule 68 of the Rules of Civil Procedure

B E T W E E N:	)	
	)	
RIGHT TO LIFE ASSOCIATION OF TORONTO AND AREA	)	Angela M. Costigan for the Applicant
	)	
Applicant	)	T. McCarthy
- and -	)	for the Applicant
	)	
	)	
METROPOLITAN TORONTO DISTRICT HEALTH COUNCIL AND INFORMATION AND PRIVACY COMMISSIONER/ONTARIO	)	Donald J.M. Brown, Q.C. and D.S. Goodis for the Respondent Information and Privacy Commissioner/Ontario
Respondents	)	
	)	Pamela A. Chapman and David R. Wright for the Intervenor Jane Doe
	)	
	)	Leslie M. McIntosh for the Attorney General for Ontario
	)	
	)	
	)	**Heard:** October 23, 1991

CALLAGHAN C.J.O.C. (ORALLY):

This is an application for judicial review of Order 149 of the Information and Privacy Commissioner ("Commissioner"), which order was issued in the following circumstances: on December 8, 1988, the Centre for Women's Health Steering Committee submitted a comprehensive proposal to the Metropolitan Toronto District Health Council for the creation of a Women's Community Health Centre. The proposal emphasized provision of a complete range of health services to women, including primary health care, family planning, abortion and health promotion programs.

On February 16, 1989, the applicant herein, the Right to Life Association of Toronto, requested access to "A Proposal to Establish a Community Health Centre". The applicant also requested access to certain names of sponsors of the proposal without any personal information appended thereto. It appears from the information before us that the applicant's information as to the proposal arose as a result of an article published in one of the Metropolitan Toronto daily newspapers on January 25, 1989.

On March 14, 1989, the Metro Toronto District Health Council ("the Council") notified the applicant that its request was denied. The executive director of the Council who for statutory purposes was the "head" of that institution, relied on ss. 17 and 21 of the Freedom of Information and Protection of Privacy Act, S.O. 1987, c. 25 (the "Act"). The refusal was founded on the view taken by the Council's executive director that the record contained personal information, the disclosure of which would result in an unwanted invasion of personal privacy of the members of the Steering Committee. Furthermore, the refusal was based on the fact that the records as referred to by the Council's executive director revealed commercial or financial information supplied in confidence, the disclosure of which would reasonably be expected to prejudice the competitive position of the Centre for Women's Health.

On March 15, 1989, the applicant appealed this decision of the Council's head to the Commissioner on the ground that the proposal dealt with public policy and public funding and it was not a private matter. Accordingly, it was the applicant's position that the ruling should be overturned and the names revealed.

On February 22, 1990, in decision No. 149 the Commissioner denied the applicant the identification of the individuals responsible for the proposal. Between that date and the date on which the appeal was instituted, the substantive portion of the proposal had already been revealed with the consent of the "affected persons". In that decision, the Commissioner ordered the disclosure of the affiliations of the persons involved, except if that disclosure would lead in any way to the identification of an individual.

In the course of the reasons delivered by the Commissioner he stated:

> Regardless of the reasons why these affiliations were included in the severed portions of the record, in my view, they, along with the names, addresses and telephone numbers included in the severed portions of the record, are personal information as defined in subsection 2(1) of the Act.

Further on p. 184 of his reasons, the Commissioner stated:

> ... I find that it is possible, after removing the names, home addresses, home telephone numbers and any personal identifiers with respect to the affiliations, for example "Director", "Co-founder" or "extension 24" of a business telephone, to disclose to the appellant (applicant here) the affiliations mentioned in the severed portions of the record.

> In my view such disclosure can be made without constituting an unjustified invasion of the personal privacy of the affected persons.

In these proceedings the applicant has taken the position that the Commissioner has misconstrued the Act.

The applicant has submitted in a full argument that the Commissioner exceeded his jurisdiction, and thereby erred in law in interpreting "personal information" within the meaning of s. 2(1) of the Act as including merely the name of an individual. The applicant took the position that the name of an individual does not constitute personal information in the absence of other personal information relating to the individual.

Furthermore, it was submitted that the proposal made by the Steering Committee members is a public matter as opposed to a personal matter. It was pointed out that the letter of submittal of the proposal refers to "our proposal", and the applicant contended that the information is more in the nature of corporate information rather than personal information and therefore does not come within the definition of "personal information" under the Act. It was the applicant's position that by so ruling, the Commissioner exceeded his jurisdiction in these matters.

When approaching the decision of a statutory tribunal such as the Commissioner in this case, this court must be mindful of the limitation of its own jurisdiction. That was probably best stated by Mr. Justice Dickson in Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Association, [1975] 1 S.C.R. 382, at pp. 388-89, where he observed:

> There can be no doubt that a statutory tribunal cannot, with impunity, ignore the requisites of its constituent statute and decide questions any way it sees fit. If it does so, it acts beyond the ambit of its powers, fails to discharge its public duty and departs from legally permissible conduct. Judicial intervention is then not only permissible but requisite in the public interest. But if the Board acts in good faith and its decision can be rationally supported on a construction which the relevant legislation may reasonably be considered to bear, then the Court will not intervene. [Emphasis added]

We are all of the view that the requested names of the individuals listed in the proposal are "personal information". This is an interpretation of the statute which can be rationally supported.

The Act provides that every person has a right of access to records in the custody or under the control of an institution, unless an exemption applies. Some of the exemptions set out in the Act can be invoked at the discretion of the "head" of an "institution", but other exemptions are mandatory, requiring the head to "refuse to disclose" the information in question (see s. 10(1) and 12-22). Section 21(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information. Section 21(1) provides:

21.-(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitles to have access;

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification there is mailed to the last known address of the individual to whom the information relates;

(c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;

(d) under an Act of Ontario or Canada that expressly authorizes disclosure;

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

(ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed in the regulations; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Under s. 2(1) of the Act, "personal information" is defined as follows. The relevant portions are:

2.--(1) in this Act,

...

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

> ...
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> ...
>
> (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; ...

In this case the named individuals support the establishment of the hospital or health centre above-mentioned. Since the proposal documents show their support for such a clinic, the disclosure of their names "would reveal other personal information about the individuals" under paragraph (h) of the definition of "personal information" in the Act. It shows, in other words, their "personal opinions or views" within the meaning of paragraph (e) of that definition. That is the basis of the Commissioner's ruling. That interpretation of the Act, in our view, is a construction and interpretation which it may reasonably be considered to bear. The construction is such that we should not intervene.

It was submitted, as mentioned above, that the names of the individuals in the manner in which they were provided and the proposal itself, constituted information similar to corporate information. We note that the proposal was made by those who signed it purportedly on behalf of a number of persons who were identified in the proposal as the Steering Committee. There was evidence before the Commissioner that some of those people were not aware their names were used and that some of them were not aware that there was a potential for their names being published. The individuals whose names were put forth as being the Steering Committee of the Women's Centre for Health are not, in our view, public figures, nor have they taken a public stand, nor is this type of a proposal made to government that could be classified as a public petition.

It is significant that the institution to which the proposal was submitted treated the information in a confidential manner and that, of course, would lead to the expectation wrong signatories that their privacy would be protected. While the substantive portions of the proposal were disclosed to the media, the names of the individuals still qualify for protection under the Act. In our view, the Commissioner's finding that the release of those names would be an unjustified invasion of personal privacy, is one that should be sustained under the Act.

The applicant in argument dealt with s. 23 of the Act and submitted that the Commissioner erred in his application of that section. Section 23 of the Act states:

> 23. 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.

The Commissioner in dealing with this stated at p. 185 of the Commissioner's Record:

> The two requirements contained in section 23 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 interest must clearly outweigh the purpose of the exemption, as distinct from the value of disclosure of the particular record in question.

The Commissioner had specifically addressed the fact that the record in question was a proposal which consists of an application of public funding and found:

> ... that the appellant has failed to demonstrate such a compelling public interest in disclosure of the personal information in the severed portions of the record which clearly outweighs the purpose of protecting personal privacy under section 21 of the Act.

He exercised his authority appropriately. He gave to the section the meaning that was intended thereby and we see no error in his application of the Act.

In the result, therefore, Order 149 should not be quashed. Accordingly, the application must be dismissed.

CALLAGHAN C.J.O.C.
O'BRIEN J.
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Applicant

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Respondents

ORAL JUDGMENT

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