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

ORDER 200

Appeal 890058

Ontario Human Rights Commission

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I N T E R I M O R D E R

INTRODUCTION:

On January 6, 1989, the Ontario Human Rights Commission (the "institution") received a request under the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act"). The requester indicated that:

> ... I wish to review Case Files in this matter [OHRC Files 10_8999 and 10_9232].

On February 3, 1989, the institution responded to the request in the following manner:

> Access is granted to all of your personal information including all correspondence to and from yourself (sic) and to documentation that you submitted to the Ontario Human Rights Commission. Access is further granted to the respondent's position, correspondence to and from the respondent and to the Analysis of Investigation Findings.
>
> Access is denied to notes taken by the Human Rights Officer such as witness statements, officer reports and to the reconsideration report in accordance with Section 14(2)(a) of the Act.
>
> ...
>
> Access is denied to a legal memorandum dated June 20, 1988 in accordance with Section 19 of the Act.
>
> ...
>
> Access is further denied to personal information about someone other than yourself in accordance with Sections 21 and 49(b) of the Act and has been "blacked out".

...

> Access to application forms, resumes and performance evaluations of other employees is denied as well under Section 21 of the Act.

On March 8, 1989, the requester appealed the decision of the institution pursuant to subsection 50(1) of the Act. This subsection gives a person who has made a request for access to a record under subsection 24(1) or a request for access to personal information under subsection 48(1) a right to appeal any decision of a head of an institution to the Commissioner. On January 5, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

On March 16, 1989, notice of the appeal was given to the institution and the appellant.

After many requests to the institution, the unsevered records were finally obtained and examined by the Appeals Officer assigned to this appeal. It could not be determined, by looking at the records, which records had been disclosed, which records were being withheld in part or in their entirety and which exemption(s) were being claimed for each record. In order to investigate and mediate this appeal, the Appeals Officer asked the institution to provide the aforementioned information in the form of an index. As the institution did not provide such an index, mediation of this appeal was impossible.

Notice that an inquiry was being conducted to review the decision of the head was sent to the appellant and the institution. Enclosed with each notice letter was a report prepared by the Appeals Officer, intended to assist the parties

in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. This report indicates that the parties, in making their representations, need not limit themselves to the questions set out in the report.

Written representations were received from the appellant and the institution. The institution provided an index as its representations. The institution also indicated that it was claiming the subsection 14(1)(c) exemption for some of the records at issue. Additional representations were provided by the institution at the request of this office. I have considered all representations in making my Interim Order.

PURPOSES OF THE ACT/BURDEN OF PROOF:

The purposes of the Act as set out in section 1 should be noted at the outset. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter_balancing privacy protection purpose of the Act. This provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions, and should provide individuals with a right of access to their own personal information.

Further, section 53 of the Act provides that the burden of proof that a record, or a part thereof, falls within one of the

specified exemptions in the Act lies with the head of the institution.

BACKGROUND:

The appellant filed a complaint with the institution alleging that he had been discriminated against in his place of employment on the basis of his race, ancestry, place of origin, colour and ethnic

origin. This complaint was assigned #10-8999. Following its investigation, the institution decided that the evidence did not warrant the appointment of a Board of Inquiry to hear the complaint.

The appellant filed a second complaint, #10-9232, in which he alleged that his employer terminated his employment in reprisal for the filing of his first complaint. Following an investigation, the institution decided that the evidence did not warrant the appointment of a Board of Inquiry to hear the second complaint.

The appellant then made an application to the institution to have it reconsider its decisions in the two complaints. Following the reconsideration of its decisions, the institution decided to uphold the decisions not to appoint a Board of Inquiry to hear his complaints.

The copy of the record provided to this office by the institution contained duplicates of some pages since some of the same information appears in both of the appellant's Human Rights investigation files. In order to avoid confusion during the

Issues/Discussion section of this Interim Order, it was necessary to collate the pages and to devise a record numbering scheme. I will be referring to the records by the number I have assigned to them throughout this Interim Order. For ease of reference, please refer to Appendix A.

ISSUES/DISCUSSION:

The issues arising in this appeal are as follows:

A. Whether the information contained in the requested records qualifies as "personal information" as defined by subsection 2(1) of the Act.

B. Whether the requested records would qualify for exemption under subsection 14(1)(c) or 14(2)(a) of the Act.

C. Whether the requested records would qualify for exemption under section 19 of the Act.

D. If the answer to either Issue B or C is in the affirmative, whether the exemption provided by subsection 49(a) of the Act applies in the circumstances of this appeal.

E. If the answer to Issue A is in the affirmative, whether the exemption provided by subsection 49(b) of the Act applies in the circumstances of this appeal.

F. If the answer to Issue A is in the affirmative, whether the exemption provided by section 21 of the Act applies in the circumstances of this appeal.

ISSUE A: Whether the information contained in the requested records qualifies as "personal information" as defined by subsection 2(1) of the Act.

In all cases where the request involves access to personal information it is my responsibility, before deciding whether the exemptions claimed by the institution apply, to ensure that the information in question falls within the definition of "personal

information" in subsection 2(1) of the Act, and to determine whether this information relates to the appellant, another individual, or both.

Subsection 2(1) of the Act states:

> "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 where 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;

In my view, the information contained in Records 2, 10, 38-41, 45, 55 and 59 does not fall within the definition of personal information contained in subsection 2(1) of the Act. I find that the information contained in Records 1, 3, 5, 8, 15-17, 36, 42-43 and 56-58 is the personal information of the appellant only. Records 7, 50, 51, 60-61, 64-66 do not contain personal information about the appellant, but contain the personal information of other individuals. The information contained in the following records is properly considered personal information about the appellant and other individuals: Records 4.1, 4.2, 6, 9, 11-14, 18-34, 35.1, 35.2, 37, 44, 46-49, 52-54, 62, 63 and 67.

I will now consider whether sections 14, 19, subsections 49(a) and 49(b) as well as section 21 of the Act have been properly applied to exempt the requested records from disclosure.

ISSUE B: Whether the requested records would qualify for exemption under subsection 14(1)(c) or 14(2)(a) of the Act.

The institution has claimed subsection 14(2)(a) as the basis for exempting Records 1-53 from disclosure. Subsection 14(1)(c) has also been claimed by the institution in respect of Records 20-31.

Subsection 14(1)(c) of the Act reads as follows:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,

...

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

...

Subsection 14(2)(a) of the Act reads as follows:

A head may refuse to disclose a record,

(a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

The words "law enforcement" are defined in subsection 2(1) of the Act as follows:

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and

(c) the conduct of proceedings referred to in clause (b);

Both Commissioner Sidney B. Linden and I have found that investigations into complaints made under the Human Rights Code, 1981, S.O. 1981 c. 53 (the "Code") are properly considered law enforcement matters and that these investigations may lead to proceedings before a Board of Inquiry under the Code, which are

properly considered law enforcement proceedings. [See Order 89 (Appeal Number 890024), dated September 7, 1989 and Order 178 (Appeal Number 890112), dated June 12, 1990.]

Commissioner Linden considered subsection 14(2)(a) of the Act in Order 38 (Appeal Number 880106), dated February 9, 1989. In that Order he stated that:

> Subsection 14(2)(a) is unusual in the context of the Freedom of Information and Protection of Privacy Act, 1987, in that it exempts a type of document, a report. The exemption does not require that the report meet additional criteria such as a reasonable expectation of some harm resulting from the disclosure of the report, or specifications about the contents thereof.
>
> ...
>
> Under subsection 14(2)(a) the head may exercise his or her discretion to deny access to an entire report.

I concur with Commissioner Linden's view of subsection 14(2)(a) and adopt it for the purposes of this appeal.

In my view, in order to qualify for exemption under subsection 14(2)(a) of the Act, a record must satisfy each part of the following three part test:

1. the record must be a report; and

2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

The word "report" is not defined in the Act. However, it is my view that in order to satisfy the first part of the test i.e. to

be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

In my opinion, the following records at issue in this appeal do not qualify as reports for the purposes of the first part of the subsection 14(2)(a) test. Therefore, these records do not qualify for exemption from disclosure under subsection 14(2)(a) of the Act as all three parts of the test must be satisfied. These records are:

> Records 1-3, 4.1, 5, 8, 10, 15-17, 20, 35.1, 36-37, 39, 40-43, 45 and 47. These records consist of internal memoranda, minutes and notes.
>
> Records 11, 13, 25-30, 34, 44, 49, and 50. These records consist of notes of witness interviews.
>
> Records 9, 12 and 14. These records consist of letters from witnesses.
>
> Records 6, 7, 38 and 51. These records consist of notes to the investigation file.

Records 18-19, 21-24, 31-33, 35.2, 46, 48, 52 and 53 are accounts of the results of various aspects of the institution's investigation of each of the appellant's two complaints. Therefore, I find that the first part of the subsection 14(2)(a) test has been satisfied with respect to these records.

I find that Record 4.2 can be considered a report, as it is a formal statement or account of the results of the institution's reconsideration of its decisions not to appoint a Board of Inquiry to hear either of the appellant's complaints.

With respect to the second part of the subsection 14(2)(a) test, I am satisfied that the records that qualify as reports were prepared in the course of law enforcement or investigations.

In my view, the third part of the test has also been satisfied for those records that qualify as reports. The institution is an agency which is established under subsection 26(1) of the Code. Subsection 26(2) of the Code stipulates that the institution is responsible to the Minister for the administration of the Code. Finally, section 28 of the Code clearly establishes that the functions of the institution include enforcing and regulating compliance with a law. Section 28 of the Code reads, in part, as follows:

> (b) to promote an understanding and acceptance of and compliance with this Act;
>
> ...
>
> (i) to enforce this Act and orders of boards of inquiry; and
>
> ...

In summary, I find that only Records 4.2, 18-19, 21-24, 31-33, 35.2, 46, 48, 52 and 53 qualify for exemption under subsection 14(2)(a) of the Act.

I will now turn to those records that did not qualify under subsection 14(2)(a), but for which the institution had also claimed subsection 14(1)(c) as the basis for exemption from disclosure.

As previously mentioned, subsection 14(1)(c) of the Act provides that a head may refuse to disclose a record where the disclosure

could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement.

The institution submits that disclosure of Records 20 and 25-30 would reveal investigative techniques that are currently in use by the institution in its enforcement of the Code.

In Order 170 (Appeal Number 880222), dated May 25, 1990, Professor John D. McCamus, Inquiry Officer, considered the interpretation of subsection 14(1)(c) of the Act. At page 30, Professor McCamus stated that:

> On a broad view, virtually any procedure, protocol or device utilized in the course of investigation could be considered to be an "investigative technique or procedure". On a narrow view, this subsection might be interpreted only to refer to investigative techniques and procedures which are of such a nature that their disclosure would compromise their effectiveness. In favour of the narrow view, of course, it might be argued that unless the investigative technique or procedure in question had such a character, there would be no purpose served by withholding disclosure. This issue has arisen for consideration under an equivalent provision of the American Freedom of Information Act. Indeed the wording of the equivalent provision of the American statute, prior to revisions effected in 1986, was very similar to the Ontario provision. That version of the Act, 5 U.S.C. sec. 552(b)(7)(E), exempted investigatory records compiled for law enforcement purposes to the extent that production of such records would "disclose investigative techniques and procedures". In a series of cases, American courts have held that in order to constitute an investigative technique or procedure in the requisite sense, the technique or procedure in question must not be so routine in nature that it is already well known to the public. (See, for example, Jaffe v. CIA [1983], 573 F. Supp. 549 (DDC) and see generally, J. T. O'Reilly, Federal Information Disclosure

> (Sheppard's/McGraw_Hill Inc., Colorado; 1987), chapter 17.11.1.
>
> In my view, a similar reading should be given to the Ontario provision. In order to constitute an "investigative technique or procedure" in the requisite sense, it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that the particular technique or procedure is generally known to the public would normally lead to the conclusion that such compromise would not be effected by disclosure and according that the technique or procedure in question is not within the scope of the protection afforded by section 14(1)(c).

I concur with Professor McCamus' interpretation of subsection 14(1)(c) and adopt it for the purposes of this appeal.

Record 20 is a memorandum from a Director to a Supervisor which reviews the evidence in the investigation file and includes an assessment of the evidence and the areas in which clarification is necessary. Records 25-30 are notes of interviews with witnesses. In my view the suggestions made in Record 20, as well as the fact that the institution interviewed witnesses during an investigation are investigative techniques or procedures which are generally known to the public. Even if I were to find that these investigative techniques or procedures are not generally known to the public, I find that disclosure of these investigative techniques or procedures would not hinder or compromise their effective utilization.

Accordingly, I find that Records 20 and 25-30 do not qualify for exemption under subsection 14(1)(c) of the Act.

ISSUE C: Whether the requested records would qualify for exemption under section 19 of the Act.

The institution has relied upon section 19 to exempt Records 54-59 from disclosure. Section 19 of the Act reads as follows:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

In its representations the institution submits that:

> Upon completion of its investigatory and conciliation functions, if a settlement is not achieved, the [institution] is vested with the authority to either request or not request the Minister to appoint a Board of Inquiry under Section 35(1) of the Ontario Human Rights Code. In exercising this statutory authority, the [institution] may, as it had in this particular case, ask its legal counsel to review the file, assess the evidence and provide the [institution] with such legal advice.
>
> ...
>
> Since the legal opinion and advice is given to [the institution] to assist the later in arriving at a decision, which could very well result in a litigation before a Board of Inquiry, the severed pages qualify not only as a common law solicitor_client privilege but also as a "record in contemplation of or for use in litigation" under the Section 19 exemption of the Freedom of Information and Protection of Privacy Act.

Commissioner Linden considered the proper interpretation of section 19 of the Act in a number of his Orders. In Order 49 (Appeal Numbers 880017 and 880048), dated April 10, 1989 he indicated that section 19 provides an institution with a discretionary exemption covering two possible situations: (1) a head may refuse to disclose a record that is subject to the common law solicitor_client privilege; or (2) a head may refuse disclosure if a record was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in

litigation. He further indicated that a record can be exempt under the second part of section 19 regardless of whether the common law criteria relating to the first part of the exemption are satisfied. I agree with and for the purposes of this appeal I adopt Commissioner Linden's interpretation of this exemption.

Record 55 is a photocopy of a "post-it" note. Record 58 is a covering memo which merely indicates that a legal opinion with respect to the appellant's complaints is attached. Record 59 is a title page for a legal opinion which includes a distribution list. I find that these records do not qualify for exemption under section 19.

I am satisfied that Records 54, 56 and 57 fall within the second branch of the section 19 exemption. I also find that the last paragraph of the second page of Record 5 contains legal advice which was prepared by Crown counsel. Therefore, the second branch of the section 19 exemption has been satisfied as it relates to the last paragraph of the second page of Record 5.

ISSUE D: If the answer to either Issue B or C is in the affirmative, whether the exemption provided by subsection 49(a) of the Act applies in the circumstances of this appeal.

In Issue B, I found that Records 4.2, 18-19, 21-24, 31-33, 35.2, 46, 48, 52 and 53 qualify for exemption under subsection 14(2)(a) of the Act. In Issue C, I found that Records 54, 56 and 57 in their entirety as well as the last paragraph of the second page of Record 5 qualify for exemption under section 19 of the Act. Under Issue A, I found that the contents of these records qualify as "personal information" about the appellant or the appellant and other individuals.

Subsection 47(1) of the Act gives individuals a general right of access to personal information about the individual in the custody or under the control of an institution. However, this right of access under subsection 47(1) is not absolute. Section 49 provides a number of exceptions to this general right of access to personal information by the person to whom it relates.

Subsection 49(a) of the Act provides that:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (a) where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information; (emphasis added)
>
> ...

In the circumstances of this appeal, subsection 49(a) of the Act provides the head with the discretion to refuse to disclose to the appellant his own personal information where sections 14 and 19 would apply. In any case in which the head has exercised his/her discretion under subsection 49(a) I look very carefully at the manner in which the head has exercised this discretion. Provided that this discretion has been exercised in accordance with established legal principles, in my view, it should not be disturbed on appeal.

In this case, the institution submitted that section 49 was not relevant and therefore, it did not provide any representations as to the exercise of discretion under subsection 49(a) of the Act. In its representations the institution indicated:

> In the main, we had allowed the appellant access to everything in the file that related to him specifically, hence section 49 is not relevant except in dealing with those pages consisting of other peoples resumes and employment evaluation reports gathered in due course of investigation.

I do not agree with the institution's position. I find that subsection 49(a) of the Act is applicable to Records 4.2, 18-19, 21-24, 31-33, 35.2, 46, 48, 52 and 53 as these records would qualify for exemption under subsection 14(2)(a), and Records 54, 56 and 57 in their entirety as well as the last paragraph of the

second page of Record 5 as these records would qualify for exemption under section 19 of the Act. Therefore, it is necessary for the head to exercise her discretion under subsection 49(a) with respect to the disclosure of these records to the appellant and to provide me with additional representations as to the factors considered in doing so. For purposes of clarity, I wish to note that Records 4.2, 18-19, 21-24, 31-33, 35.2, 46, 48 and 52-54 must also be considered under subsection 49(b) of the Act as dealt with under Issue E below.

ISSUE E: If the answer to Issue A is in the affirmative, whether the exemption provided by subsection 49(b) of the Act applies in the circumstances of this appeal.

Even though the institution submitted that section 49 of the Act did not apply, it relied on subsection 49(b) to exempt Records 28-30 from disclosure. I found in Issue A that there were many more records than those cited by the institution which qualified as personal information of the appellant and other individuals. Therefore, I must determine whether the following records fall

within the exemption provided by subsection 49(b): Records 4.1, 4.2, 6, 9, 11-14, 18-34, 35.1, 35.2, 37, 44, 46-49, 52-54, 62-63 and 67.

Subsection 49(b) of the Act states:

> 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;
>
> ...

Subsection 49(b) of the Act introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then subsection 49(b) gives the head discretion to deny access to the personal information of the requester.

The institution claimed that subsection 49(b) applied to Records 28-30. However, it is unclear to me whether or not the head has in fact determined that the disclosure of Records 4.1, 4.2, 6, 9, 11-14, 18-34, 35.1, 35.2, 37, 44, 46-49, 52-54, 62-63 and 67 would constitute an unjustified invasion of another individual's personal privacy. Therefore, I order the head to provide me with further representations with respect to the application of 49(b) of the Act to these records.

ISSUE F: If the answer to Issue A is in the affirmative, whether the exemption provided by section 21 of the Act applies in the circumstances of this appeal.

Under Issue A, I found that Records 7, 50-51, 60-61, and 64-66 contain personal information about individuals other than the appellant. Once it has been determined that a record contains personal information, subsection 21(1) of the Act prohibits the disclosure of this personal information to any person other than the individual to whom it relates, except in certain circumstances. One such circumstance is contained in subsection 21(1)(f) of the Act which reads as follows:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> ...
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Guidance is provided in subsections 21(2) and (3) of the Act with respect to the determination of whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

Subsection 21(3) of the Act sets out a list of the types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The institution has cited subsections 21(1) and 21(3)(b), (d) and (g) of the Act as the basis for denying access to the personal information of individuals other than the appellant.

The relevant provisions of subsections 21(1) and (3) read as follows:

> (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> ...
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.
>
> ...
>
> (3) 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;
>
> ...
>
> (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
>
> ...

Record 7 appears to be a note to the investigation file which indicates that a letter was sent to a member of senior management at the appellant's place of employment and that another member of senior management would be calling the Human Rights Officer. Record 61 contains an individual's name and work address. Records 50 and 51 document the fact that the appellant's employer provided the institution with a copy of a particular memo. I find that disclosure of Records 7, and 50-51 would not constitute an unjustified invasion of the personal privacy of the individuals mentioned therein. However, I find that in the circumstances of this appeal, disclosure of Record 61 would constitute an unjustified invasion of the personal privacy of the individual mentioned therein.

Records 60 and 64-66 contain some or all of the following types of information about individuals other than the appellant: performance appraisal, resume, acknowledgement of application for employment,
change in rate of pay, application for employment, inter-office transfer, employee data form and employee profile. I find that disclosure of the personal information of the individuals mentioned in Records 60 and 64-66 would be a presumed unjustified invasion of those individuals' personal privacy pursuant to subsection 21(3)(d) or 21(3)(g) of the Act.

Commissioner Linden stated in Order 20 (Appeal Number 880075), dated October 7, 1988, that "It could be that in an unusual case, a combination of the circumstances set out in subsection 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view such a case would be extremely unusual". I agree with Commissioner Linden's view and adopt it for the purposes of this appeal.

In this appeal it is my view that the presumed unjustified invasion of the personal privacy of individuals other than the appellant has not been rebutted. Accordingly, I uphold the head's decision to withhold Records 60 and 64-66 from disclosure pursuant to subsection 21(1) of the Act.

INTERIM ORDER:

1. I order the head to exercise her discretion pursuant to subsection 49(a) of the Act with respect to the disclosure of Records 4.2, 18-19, 21-24, 31-33, 35.2, 46, 48, 52-54, 56 and 57 in their entirety as well as the last paragraph of the second page of Record 5 to the appellant. I further order the head to provide me with additional representations as to the factors considered in doing so.

2. I order the head to provide me with further representations with respect to the application of 49(b) of the Act in relation to Records 4.1, 4.2, 6, 9, 11-14, 18-34, 35.1, 35.2, 37, 44, 46-49, 52-54, 62-63 and 67.

3. I further order that the head comply with Items 1 and 2 above within 15 days from the date of this Interim Order.

4. I uphold the head's decision to exempt Records 60-61 and 64-66 from disclosure pursuant to subsection 21(1) of the Act.

5. I order the head to disclose Records 1-3, 7, 8, 10, 15-17, 36, 38-43, 45, 50-51, 55, and 58-59 in their entirety and Record 5 with the last paragraph severed to the appellant

within 20 days from the date of this Interim Order. I further order the head to advise me in writing within 5 days of the date of disclosure, of the date on which disclosure was made.

The representations and notice concerning disclosure should be forwarded to my attention.

6. Following the receipt of the representations, as ordered in Item 1, 2 and 3 above, I will make an Order disposing of the remaining issues in this appeal.

Original signed by: October 11, 1990
Tom A. Wright Date
Assistant Commissioner

APPENDIX A

Record No.	File No.	Page No.	Exemption Claimed
1	10_9232	6, 29	ss.14(2)(a)
2	10_9232	7, 8	ss.14(2)(a)
3	10_9232	30	ss.14(2)(a)
	10_8999	28	
4.1	10_9232	31 _ 33	ss.14(2)(a)
	10-8999	29 _ 52	
4.2	10-9232	36 - 49	
		76 - 89	
	10-8999	78 _ 91	

Record No.	File No.	Page No.	Exemption Claimed
5	10_9232	34 _ 35 55 _ 56	ss.14(2)(a)
6	10_9232	109 _ 110	ss.14(2)(a)
7	10_9232	111	ss.14(2)(a)
8	10_9232 10_8999	139 123	ss.14(2)(a)
9	10_9232	149 _ 152	ss.14(2)(a)
10	10_9232	158	ss.14(2)(a)
11	10_9232 10_8999	164 146	ss.14(2)(a)
12	10_9232	165	ss.14(2)(a)
13	10_9232 10_8999 	166 _ 167 150 _ 151 300 _ 301	ss.14(2)(a)
14	10_9232	168	ss.14(2)(a)
15	10_9232 10_8999	175 _ 177 162 _ 164	ss.14(2)(a)
16	10_9232	179	ss.14(2)(a)
17	10_9232 10_8999	183 _ 186 170 _ 171	ss.14(2)(a)
18	10_9232	190 _ 193	ss.14(2)(a)
19	10_9232	224 _ 225	ss.14(2)(a)
20	10_9232 10_8999	232 _ 233 218 _ 219	ss.14(1)(c) & 14(2)(a) ss.14(2)(a)
21	10_9232	267 _ 270	ss.14(1)(c) &

			14(2)(a)
	10_8999	232, 234, 293, 312	
22	10_9232	273 _ 275	ss.14(1)(c) & 14(2)(a)
	10_8999	237, 271, 272, 290	
23	10_9232	281	ss.14(1)(c) & 14(2)(a)
24	10_9232	284 _ 292	ss.14(1)(c) & 14(2)(a)
	10_8999	385 _ 389	
25	10_9232	293 _ 299	ss.14(1)(c) & 14(2)(a)
	10_8999	309	
26	10_9232	300 _ 301	ss.14(1)(c) & 14(2)(a)
	10_8999	310, 311 420, 421	
27	10_9232	302 _ 311	ss.14(1)(c) & 14(2)(a)
28	10_9232	312 _ 317	ss.14(1)(c) & 14(2)(a) & 49(b)

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30	10_9232	320 _ 328	ss.14(1)(c) & 14(2)(a) & 49(b)
31	10_9232	357	ss.14(1)(c) & ss.14(2)(a)

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36	10_9232	469	ss.14(2)(a)
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37	10_8999	27	ss.14(2)(a)
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39	10_8999	72 _ 73	ss.14(2)(a)
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42	10_8999	76	ss.14(2)(a)
43	10_8999	77	ss.14(2)(a)
44	10_8999	92	ss.14(2)(a)
45	10_8999	185	ss.14(2)(a)
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47	10_8999	210	ss.14(2)(a)
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49	10_8999	295 _ 299	ss.14(2)(a)
50	10_8999	302	ss.14(2)(a)
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