



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

# **ORDER P-242**

**Appeal 900460**

**Ontario Human Rights Commission**



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## O R D E R

### BACKGROUND :

This is the Final Order in the matter of Appeal Number 890058, dealt with in part in Interim Order 200 dated October 11, 1990.

The appellant had filed two complaints of discrimination with the Ontario Human Rights Commission (the "institution") and wants access to the contents of those complaint files.

Interim Order 200 dealt with a number of the records at issue in the appeal. The head was ordered 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 of the second page severed. In Provision 1 of the Interim Order, the head was ordered to exercise her discretion pursuant to section 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. Further, in Provision 2 of the Interim Order, the head was ordered to provide further representations with respect to the application of section 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.

Representations were received from the institution on both issues. Attempts by the Appeals Officer to locate certain

persons whose interests might be affected by the outcome of the appeal were unsuccessful.

**SUBMISSIONS/CONCLUSION:**

The issues to be dealt with in this Final Order are as follows:

- A. Whether the exemption provided by section 49(b) of the Act applies to the records; and
- B. Whether the head properly exercised the discretion provided by section 49(a) of the Act.

**DISCUSSION:**

**ISSUE A: Whether the exemption provided by section 49(b) of the Act applies to the records.**

The record numbers used throughout this Order are the same as those used in Interim Order 200. For ease of reference, Appendix "A" to Interim Order 200 is attached.

In Interim Order 200, I found that 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 contained personal information about the appellant and other individuals.

As a result, I ordered the head to provide me with further representations on the application of section 49(b) to these records.

Section 49(b) of the Act provides 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;

Section 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/her own personal information against another individual's right to the protection of his/her personal privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the head the discretion to deny access to the personal information of the requester.

Sections 21(2) and (3) of the Act provide guidance in determining if disclosure of personal information would constitute an unjustified invasion of personal privacy.

The head submitted that the disclosure of the personal information contained in the records would constitute a presumed unjustified invasion of personal privacy under sections 21(3)(b) and (d). I will first consider section 21(3)(b) which reads as follows:

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;

As stated in the Interim Order, 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. Further, I have found that the investigations may lead to proceedings before a Board of Inquiry under the Code, and that such proceedings are properly considered law enforcement matters. If there has been a violation, the Code provides that a penalty or sanction could be imposed. I am of the view that the personal information contained in the records was compiled and is part of an investigation into a possible violation of law and accordingly, the requirements for a presumed unjustified invasion of the personal privacy of other individuals under section 21(3)(b) have been satisfied. It is therefore not necessary for me to consider the requirements of the presumption contained in section 21(3)(d).

Section 21(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 21(3). In my view, these records do not contain any information that pertains to section 21(4).

In Order 20, former Commissioner Linden stated that:

...a combination of circumstances set out in section 21(2) might be so compelling as to outweigh a presumption under section 21(3). However, in my view such a case would be extremely unusual.

The institution submits that it has considered section 21(2) and has not found a combination of circumstances which would rebut the presumption raised by section 21(3) (b). I agree.

As the release of the information would constitute an unjustified invasion of another individual's personal privacy, section 49(b) gives the head the discretion to deny access to the personal information of the requester.

In weighing the appellant's right to access to his own personal information against the right to privacy of other individuals, I am satisfied that the head exercised her discretion in accordance with proper legal principles and I uphold the decision of the head to deny access to the records.

**ISSUE B: Whether the head properly exercised the discretion provided by section 49(a) of the Act.**

In Interim Order 200, I found that Records 4.2, 18-19, 21-24, 31-33, 35.2, 46, 48, 52 and 53 would qualify for exemption under section 14(2)(a) subject to the head's exercise of discretion under section 49(a). As I have already found in Issue A that these records are exempt from disclosure under section 49(b), it is not necessary for me to consider them again under section 49(a).

I previously found, in Interim Order 200, that Records 54, 56, 57 and the last paragraph of the second page of Record 5 would qualify for exemption under section 19, subject to the head's exercise of discretion under section 49(a). As I have already found in Issue A that Record 54 was exempt from disclosure under section 49(b), it is not necessary for me to consider it again under section 49(a). Therefore, what remains for my consideration are Records 56, 57, and the last paragraph of the second page of Record 5.

Section 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;

I have reviewed the institution's representations with respect to the head's exercise of discretion to deny access to the records. The head has provided reasons which address the circumstances of this case. I am satisfied that discretion has been exercised in accordance with established legal principles and would not alter it on appeal.

**ORDER:**

I uphold the head's decision.

Original signed by: \_\_\_\_\_  
1991  
Tom Wright  
Commissioner

\_\_\_\_\_ September 26,  
Date



**APPENDIX A**

<b>Record No.</b>	<b>File No.</b>	<b>Page No.</b>	<b>Exemption Claimed</b>
1	10-9232	6,29	ss.14(2) (a)
2	10-9232	7,8	ss.14(2) (a)
3	10-9232 10-8999	30 28	ss.14(2) (a)
4	10-9232		ss.14(2) (a)
4.1 4.2	10-9232 10-8999 10-9232 10-8999	31-33 29-52 36-49 76-89 87-91	ss.14(2) (a)
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	164 146	ss.14(2) (a)
13	10-9232 10-8999	165	ss.14(2) (a)
14	10-9232	166-167 150-151 300-301	ss.14(2) (a)
15	10-9232 10-8999	168	ss.14(2) (a)
16	10-9232	175-177 162-164	ss.14(2) (a)
17	10-9232 10-8999	179	ss.14(2) (a)
18	10-9232	183-186 170-171	ss.14(2) (a)
19	10-9232	190-193	ss.14(2) (a)
20	10-9232	224-225	ss.14(2) (a)
21	10-9232 10-8999	232-233 218-219	ss.14(2) (a)

<b>Record No.</b>	<b>File No.</b>	<b>Page No.</b>	<b>Exemption Claimed</b>
22	10-9232 10-8999	267-270 232, 234, 293, 312	ss.14(2) (a)
23	10-9232	273-275 237, 271, 272, 290	ss.14(2) (a)
24	10-9232 10-8999	281	ss.14(2) (a)
25	10-9232 10-8999	284-292 385-389	ss.14(2) (a)
26	10-9232 10-8999	293-299 309	ss.14(2) (a)
27	10-9232	300-301 310, 311, 420, 421	ss.14(2) (a)
28	10-9232	302-311	ss.14(2) (a)
29	10-9232	312-317	ss.14(2) (a)
30	10-9232	318-319	ss.14(2) (a)
31	10-9232	320-328	ss.14(2) (a)
32	10-9232	357	ss.14(2) (a)
33	10-9232	362	ss.14(2) (a)
34	10-9232	392-393	ss.14(2) (a)
35	10-9232	397-404 405	ss.14(2) (a)
36	10-9232 10-8999	469 365	ss.14(2) (a)
37	10-8999	27	ss.14(2) (a)
38	10-8999	53	ss.14(2) (a)
39	10-8999	72-73	ss.14(2) (a)
40	10-8999	74	ss.14(2) (a)
41	10-8999	75	ss.14(2) (a)
42	10-8999	76	ss.14(2) (a)
43	10-8999	77	ss.14(2) (a)
44	10-8999	92	ss.14(2) (a)

<b>Record No.</b>	<b>File No.</b>	<b>Page No.</b>	<b>Exemption Claimed</b>
45	10-8999	185	ss.14(2) (a)
46	10-8999	209	ss.14(2) (a)
47	10-8999	210	ss.14(2) (a)
48	10-8999	223	ss.14(2) (a)
49	10-8999	295-299	ss.14(2) (a)
50	10-8999	302	ss.14(2) (a)
51	10-8999	303	ss.14(2) (a)
52	10-8999	312	ss.14(2) (a)
53	10-8999	410	ss.14(2) (a)
54	10-9232 10-8999	50-54 58-62 65-69 57-61 62-66	ss.14(2) (a)
55	10-9232	64	ss.14(2) (a)
56	10-9232	57	ss.14(2) (a)
57	10-9232 10-8999	63	ss.14(2) (a)
58	10-8999	54	ss.14(2) (a)
59	10-8999	55	ss.14(2) (a)
60	10-9232 10-8999	56	ss.14(2) (a)
61	10-9232 10-8999	480-487 485-492	ss.14(2) (a)
62	10-9232 10-8999	488 493	ss.14(2) (a)
63	10-9232 10-8999	489-490 494-495	ss.14(2) (a)
64	10-9232 10-8999	491-492 496-497	ss.14(2) (a)
65	10-9232 10-8999	493-494 498-499	ss.14(2) (a)
66	10-9232	495-512	ss.14(2) (a)

	10-8999		
67	10-9232 10-8999	513-523 518-528	ss.14(2) (a)
68	10-9232 10-8999	304	ss.14(2) (a)
69	10-9232 10-8999		ss.14(2) (a)