



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

# **ORDER P-593**

**Appeal P-9300387**

**Ministry of Health**



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# ORDER

## BACKGROUND:

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to certain records relating to an Employment Equity complaint initiated by the requester and records relating to the Ministry's decision not to investigate the matter further. The Ministry located two records responsive to the request, and denied access to them pursuant to sections 13(1) and 19 of the Act. The requester appealed the denial of access.

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the Ministry was sent to the appellant and the Ministry. Representations were received from both parties.

The two records at issue are an undated draft letter (Record 1) and an interoffice memorandum dated December 10, 1992 to which is attached the same undated draft letter (Record 2). Record 1, and the attachment to Record 2, is a draft letter which was prepared by the Workplace Discrimination and Harassment Policy (the WDHP) Office of Management Board Secretariat at the request of the WDHP Co-ordinator for the Ministry of Health. Record 2 is an inter-office memorandum from Counsel with the Ministry's Legal Services Branch to the WDHP Co\_ordinator for the Ministry.

## ISSUES:

- A. Whether the records contain the "personal information" of the appellant as defined by section 2(1) of the Act.
- B. Whether the discretionary exemptions provided by sections 13(1) and 49(a) of the Act apply to Records 1 and 2.
- C. Whether the discretionary exemption provided by section 19 of the Act applies to Records 1 and 2.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the records contain the "personal information" of the appellant as defined by section 2(1) of the Act.**

"Personal information" is defined in section 2(1) of the Act, in part, as "... recorded information about an identifiable individual ...".

Record 1 responds in some detail to a number of issues raised by the appellant in the course of his racial harassment complaint. Accordingly, it contains the personal information of both the appellant and other identifiable individuals. Record 2 contains the personal information of the appellant as it makes reference to him by name and suggests a course of action to be taken in response to a request by the appellant for a further investigation into the Employment Equity complaint initiated by the appellant.

**ISSUE B: Whether the discretionary exemptions provided by sections 13(1) and 49(a) of the Act apply to Records 1 and 2.**

Section 13(1) of the Act provides as follows:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process (Orders 118, P-304, P-348 and P-356).

In its representations, the Ministry describes in some detail the circumstances surrounding the creation of Records 1 and 2. It goes on to indicate that:

The draft letter is in itself the advice and recommended course of action of a public servant. The advice provided [to the recipient] concerns how to respond to a request to investigate a racial harassment complaint ...

The memorandum which is included in Record 2 specifically suggests how a response to the request for an investigation should be formulated and recommends that the approach suggested in the attached draft letter not be followed.

In my view, both Records 1 and 2 contain "advice or recommendations" within the meaning of section 13(1) of the Act sufficient to qualify for exemption. Each record describes a suggested course of action, which may be followed by the recipient of the communication. Accordingly, I am of the view that section 13(1) of the Act applies to exempt both Records 1 and 2 from disclosure.

I have found Records 1 and 2 to be exempt from disclosure pursuant to section 13(1) of the Act. Because these records contain the personal information of the appellant, I must now consider the application of section 49(a) of the Act which states:

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

where section 12, **13**, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information; [emphasis added]

This section is a discretionary exemption which gives the head discretion to deny access to an individual's own personal information where one of the enumerated exemptions apply. The Ministry has provided representations regarding the exercise of its discretion to deny access to the records. Having reviewed these representations, I find nothing to indicate that the exercise of discretion was improper and I would not alter this determination on appeal.

Because of the manner in which I have disposed of Issues A and B, it is not necessary for me to address Issue C.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ December 2, 1993