



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

# **ORDER P-1013**

**Appeal P-9500073**

**Ontario Human Rights Commission**



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## **NATURE OF THE APPEAL:**

The Ontario Human Rights Commission (the OHRC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the contents of a specific OHRC file. The requester is the complainant in the requested OHRC file.

The OHRC identified numerous records as being responsive to the request. Access was granted to the majority of the records, while others were withheld, in whole or in part, pursuant to the following exemptions in the Act:

- advice to government - section 13(1)
- law enforcement - section 14(2)(a)
- discretion to refuse requester's own information - section 49(a)
- invasion of privacy - sections 21(1) and 49(b)

The requester appealed the decision to deny access. During mediation, the appellant confirmed that he did not want access to pages 13-92. Therefore, I will not consider these records in this order.

The records that remain at issue in this appeal and the exemptions which have been claimed for them are set out in Appendix "A" to this order. They include letters, handwritten notes, complaint investigation and case disposition documents. In this order, I will refer to the records by record number. Appendix "A" identifies the records by both record number and page number.

A Notice of Inquiry was sent to the appellant and the OHRC. Representations were received from the OHRC only. The OHRC states that Record 27, although part of this investigation file, was generated by an earlier investigation into a prior complaint by the same requester. Record 27 has already been disclosed to the appellant pursuant to Order P-598 (Appeal Number P-9300030). Therefore, I need not include this record in my discussion below. To avoid any confusion however, I will order the OHRC to disclose a further copy of Record 27 to the appellant.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

I have reviewed each of the records at issue. All of the records contain information that relates to the appellant. Accordingly, I find that all the records at issue contain the appellant's personal information.

Records 1, 2, 3, 4, 5, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30 and 31 identify one or more individuals by name and also contain recorded information about these individuals. Accordingly, in

addition to containing the personal information of the appellant, I find that these records contain the personal information of another individual or individuals.

Record 13 contains the personal information of other employees of the respondent to the OHRC complaint.

While these individuals are not identified by name, knowledgeable individuals could link this information to the individuals to whom it pertains, and for this reason, I am of the view that it constitutes their personal information. Accordingly, in addition to containing the personal information of the appellant, I find that Record 13 contains the personal information of other individuals.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION**

Under section 49(a) of the Act, the OHRC has the discretion to deny access to records which contain an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include both of the exemptions claimed with respect to the records at issue, namely law enforcement (section 14) and advice or recommendations (section 13). In the discussion which follows, I will consider whether the records qualify under these sections as a preliminary step in determining whether the exemption in section 49(a) applies.

### **LAW ENFORCEMENT**

The OHRC claims that Records 8 and 9 are exempt under section 14(2)(a) of the Act.

In order for a record to qualify for exemption under this section, the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act (Order P-324). Order 89 and many subsequent orders have established that OHRC investigations which are conducted pursuant to the Ontario Human Rights Code (the Code) meet this definition, and I adopt this finding for the purposes of this order.

In addition, for a record to qualify for exemption under this section of the Act, OHRC 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.

Record 8 summarizes the Human Rights Officer's response to the parties' submissions. Record 9 is a Case Disposition Form. In my view, both these records contain a formal statement or account of the results of the collation and consideration of information, and thus qualify as reports (Order 200). It is clear that both

the records were also prepared in the course of law enforcement (pursuant to the Code) by the OHRC which has the responsibility for enforcing that statute.

Accordingly, I find that Records 8 and 9 qualify for exemption under section 14(2)(a).

I have previously found that both these records contain the appellant's personal information. As noted above, section 49(a) provides an exemption for records containing a requester's own personal information where certain other exemptions (including section 14) would otherwise apply. Having found that Records 8 and 9 qualify for exemption under section 14(2)(a), I find that these records, in their entirety, are exempt from disclosure under section 49(a).

## **ADVICE OR RECOMMENDATIONS**

Section 13(1) of the Act states that:

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.

In Order 94, former Commissioner Sydney B. Linden commented on the scope of this exemption. He stated that it "... purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making and policy-making."

The OHRC relies on this exemption with respect to Records 4, 6, 7, 8, 9, 10, 12, 14, 28 and 32. I have already found that Records 8 and 9 are exempt under section 49(a) in my discussion under "Law Enforcement" above, and accordingly, I will not consider these two records in this discussion.

Record 4 consists of three pages of the Human Rights Officer's handwritten notes; Record 6 is a Triage form which contains the suggestions of the Officer; Record 7 contains the Officer's handwritten notes setting out the reasons and the recommendation not to proceed before the Commissioners; Record 10 is a draft decision and Record 12 contains draft reconsideration decisions; Record 14 consists of three pages of the officer's notes and recommendations on the two complaints; Record 28 contains the severed portion of the case disposition report and Record 32 contains the severed portions of the intake report.

I have carefully reviewed the information in the records listed above and I find that they qualify for exemption under section 13(1) of the Act because they set out a suggested course of action with respect to the OHRC's decision-making mandate as established in the Code. Therefore, Records 4, 6, 7, 10, 12 and 14 in their entirety together with the withheld portions of Records 28 and 32 qualify for exemption under section 13(1), and are therefore exempt under section 49(a) of the Act.

## **INVASION OF PRIVACY**

The OHRC has claimed that section 49(b) applies to exempt all of Records 1, 2, 3, 5 and 11 and the withheld portions of Records 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30 and 31.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the OHRC must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

In reviewing the information at issue, I note that all the information that relates solely to the appellant has already been disclosed to him. What remains is that information that also relates to other identifiable individuals. In my view, the presumption in section 21(3)(b), which pertains to information compiled and identifiable as part of an investigation into a possible violation of law (the Code), applies to all of Records 1, 2, 3, 5, 11 and 13 and to the withheld parts of Records 15-26, 29, 30 and 31. Section 21(4) does not apply to the personal information in the records and the appellant has not raised the application of section 23 of the Act. I am satisfied that disclosure of the information in the records would constitute an unjustified invasion of the personal privacy of other individuals in the circumstances of this appeal and section 49(b) of the Act applies.

### **ORDER:**

1. I order the OHRC to disclose Record 27 to the appellant within fifteen (15) days of the date of this order.
2. In all other respects, I uphold the decision of the OHRC to deny access to all the remaining records.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the OHRC to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_

\_\_\_\_\_ October 5, 1995

Mumtaz Jiwan

Inquiry Officer

## APPENDIX "A"

### INDEX OF RECORDS AT ISSUE

RECORD NUMBER	PAGE NUMBERS	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED
1	1	Handwritten officer notes dated May 1, 1992	21, 49(b)
2	2	Handwritten notes of officer dated April 29, 1992	21, 49(b)
3	3-8	Witness interview dated May 12, 1992	21, 49(b)
4	9-11	Handwritten officer notes, undated	13(1), 49(b)
5	12	Witness home address and telephone number	21, 49(b)
6	93	Internal Commission triage form dated November 7, 1991	13(1), 49
7	94	Handwritten officer notes dated July 7, 1993	13(1), 49
8	95	Law enforcement investigation report	13(1), 14, 49
9	96	Law enforcement case disposition report	13(1), 14, 49
10	97	Draft Commission reasons (Final reasons released to requester)	13(1), 49
11	98-99	Respondent's memorandum dated June 19, 1991	21, 49(b)
12	100-102	Draft Commission reasons (Final reasons released to requester)	13(1), 49(b)
13	103-108	Statistical personnel data	21, 49(b)
14	109-111	Officer notes	13(1), 49
15	112-113	Handwritten officer notes dated April 7 and May 11, 1992	21, 49(b)
16	114-115	Letter dated June 2, 1992	21, 49(b)
17	116	Handwritten officer notes dated August 14, 1992	21, 49(b)
18	117	Handwritten officer notes dated September 9, 1992	21, 49(b)
19	118	Letter dated September 18, 1992 from Sheridan College	21, 49(b)
20	119	Letter dated April 2, 1992	21, 49(b)

<b>RECORD NUMBER</b>	<b>PAGE NUMBERS</b>	<b>DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART</b>	<b>EXEMPTIONS OR OTHER SECTION(S) CLAIMED</b>
21	120	Letter dated March 25, 1992	21, 49(b)
22	121	Letter dated March 12, 1992 from the Commission	21, 49(b)
23	122-123	Letter dated February 27, 1992	21, 49(b)
24	124	Letter dated January 14, 1993	21, 49(b)
25	125	Handwritten officer notes dated May 13, 1992	21, 49(b)
26	126	Handwritten officer notes dated May 15, 1992	21, 49(b)
27	127	Reconsideration report dated October 17, 1990	13(1), 14(2)
28	128	Law enforcement case disposition report	13(1), 14(2)
29	129-130	Handwritten officer notes	21, 49(b)
30	131	Letter dated August 27, 1992 from the Commission	21, 49(b)
31	132-133	Law enforcement record of investigation report	21, 49(b), 14(2)
32	134-135	Law enforcement record of intake report	13(1), 14(2)