



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-973

Appeal P-9500125

Ontario Human Rights Commission



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ontario Human Rights Commission (OHRC) received a request for all documents, records and correspondence pertaining to a specified OHRC file. The request for this information was submitted by the appellant, through his counsel. The appellant is the complainant in the requested OHRC file.

The OHRC located responsive records. Access was granted to a number of records, while others were withheld pursuant to the following exemptions in the Act:

- advice to government - section 13(1)
- law enforcement - sections 14(1)(a), (b) and (d) and section 14(2)(a)
- invasion of privacy - sections 21(1) and 49(b).

The appellant filed an appeal of this denial of access, disputing the applicability of these exemptions.

A Notice of Inquiry was sent to the appellant, the OHRC and an affected party (the employer named as a respondent in the complaint). Because the records appeared to contain the appellant's own personal information, the Notice of Inquiry raised the possible application of section 49(a) of the Act. That section provides a discretionary exemption with respect to records containing a requester's own personal information where certain exemptions would otherwise apply to the information. Representations were received from all three parties who received the Notice of Inquiry.

The records at issue in this case, and the exemptions which have been claimed for them, are set out in Appendix "A" attached to this order. They include a chronology of the complaint, an OHRC internal report, correspondence and handwritten notes.

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 the records at issue. The appellant is named in each of them, and it is also clear in each of the records that he is the complainant in the OHRC proceeding referred to in the request. Accordingly, I find that all the records at issue contain the appellant's personal information.

Records 9, 11, 14, 17, 18, 19 and 20 identify one or more of the individual respondents by name, and it is clear from the contents of these records that these individuals are in fact respondents in an OHRC

complaint. 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.

Records 3, 8, 16 and 21 also contain references to individual respondents and their involvement in this case, although their names are not mentioned in that capacity. However, 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 these records contain the personal information of another individual or individuals.

I also find that the personal information in Records 1, 2, 4, 5, 6, 7, 10, 12, 13 and 15 pertains only to the appellant, and not to any other individual.

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 for exemption under these sections as a preliminary step in determining whether the exemption in section 49(a) applies.

LAW ENFORCEMENT

Sections 14(1)(a) and (b)

The OHRC claims that these exemptions apply to all of the records at issue in this appeal.

Sections 14(1)(a) and (b) of the Act state as follows:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

In order for a record to qualify for exemption under either of these sections, 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.

The purpose of sections 14(1)(a) and (b) is to provide the institution with the discretion to preclude access to records in circumstances where disclosure would interfere with an **ongoing** law enforcement matter or investigation (Order P-403).

In the circumstances of this appeal, I accept the OHRC's submission that the matter is ongoing. The process is currently at the reconsideration stage, and Order P-330 established that an OHRC investigation will not be considered complete in these circumstances. I agree.

It now remains to be determined whether disclosure of the records at issue could reasonably be expected to result in the harms outlined in sections 14(1)(a) or (b).

The OHRC submits that it has established procedures for carrying out its mandate, and extracts from these procedures are attached to its representations. The OHRC appears to take the position that any disclosure contrary to this procedural guide would, by definition, constitute interference with a law enforcement matter under section 14(1)(a), as well as interference with an investigation undertaken with a view to a law enforcement proceeding under section 14(1)(b). In my view, the question for me to decide is not whether disclosure would contravene the OHRC's procedural guide but whether disclosure could reasonably be expected to cause any of the harms mentioned in sections 14(1)(a) and (b), based upon my assessment of the evidence in that regard. However, the OHRC's procedural guide, developed as a result of its extensive experience with investigations of this kind, is a relevant factor for me to consider.

As far as the issue of interference with an investigation under the Code is concerned, consistent with previous orders, I find that the reconsideration process necessarily includes making use of certain investigation related records, and any record, the disclosure of which could reasonably be expected to interfere with the institution's investigation of the complaint, qualifies for exemption under sections 14(1)(a) and (b).

Having reviewed the records, I find that disclosure of Records 6, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20 and 21 could reasonably be expected to interfere with the complaint investigation, and therefore these records qualify for exemption under sections 14(1)(a) and (b). However, in the circumstances of this appeal, I find that Records 1, 2, 4, 5, 7, 13 and 15 contain information which relates to various administrative stages in the processing of the appellant's complaint, and are not sufficiently connected to the actual investigation to satisfy the requirement for exemption under sections 14(1)(a) or (b).

Because of the finding I will make concerning Record 3 under my discussion of section 14(2)(a), below, it is not necessary for me to determine whether it qualifies for exemption under sections 14(1)(a) or (b).

The appellant submits that exemptions should be construed narrowly and that, under section 10(2) of the Act, disclosure of parts of records which do not fall under an exemption is required. However, many orders have established that information to be disclosed on the basis of section 10(2) should be meaningful, and not consist of disconnected words or phrases (see, for example, Order 24). With respect to the records which I have found to qualify for exemption under sections 14(1)(a) and (b), the application of

section 10(2) would not result in the disclosure of any meaningful information, and in my view the exemptions apply to these records in their entirety.

I have previously found that all of the records at issue in this appeal contain the appellant's own 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 6, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20 and 21 qualify for exemption under sections 14(1)(a) and (b), I find that these records, in their entirety, are exempt from disclosure under section 49(a).

Section 14(1)(d)

This section states as follows:

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

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

The OHRC has claimed this exemption for all the records at issue. However, its representations on this section only refer to Records 9, 11, 14 and 21. As I have already found that these records qualify for exemption under sections 14(1)(a) and (b), and are therefore exempt under section 49(a), it is not necessary for me to consider whether they also qualify under section 14(1)(d).

I have not been provided with any evidence to justify a conclusion that disclosure of any of the records which I have found not to qualify under sections 14(1)(a) and (b) could reasonably be expected to disclose the identity of a confidential source of information, nor any information provided by such a source. Accordingly, I find that these records (i.e. Records 1, 2, 4, 5, 7, 13 and 15) do not qualify for exemption under section 14(1)(d).

Section 14(2)(a)

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. In my discussion of sections 14(1)(a) and (b) above, I found that OHRC investigations meet this requirement, and this finding also applies with respect to section 14(2)(a).

In addition, for a record to qualify for exemption under section 14(2)(a) of the Act, the institution 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 3 is a report summarizing the Human Rights Officer's response to the parties' submissions. I find that it is clearly a report. There is no doubt that it was prepared in the course of the OHRC investigation of the complaint, which is a law enforcement investigation conducted pursuant to the OHRC's mandate to enforce the Code. Accordingly, this record meets all three parts of the test just set out, and it qualifies for exemption under section 14(2)(a).

I have previously found that Record 3 contains 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 Record 3 qualifies for exemption under section 14(2)(a), I find that this record, in its entirety, is exempt from disclosure under section 49(a).

ADVICE TO GOVERNMENT

The OHRC claims this exemption (set out in section 13(1) of the Act) for Records 3 and 21. I have already found that Record 3 qualifies for exemption under section 14(2)(a), and Record 21 qualifies under sections 14(1)(a) and (b). Accordingly, I need not consider the application of section 13(1) in this appeal.

INVASION OF PRIVACY

The OHRC claims that the exemptions provided by sections 21(1) and/or 49(b) apply to Records 9, 11, 13, 14 and 21. These sections provide exemptions intended to protect the personal privacy of individuals other than the requester. I have already found that other provisions apply to exempt Records 9, 11, 14 and 21, and for this reason I need not consider the possible application of these sections to them. This leaves Record 13.

I have found that Record 13 contains only the personal information of the appellant, and does not contain personal information pertaining to any other individual. In these circumstances, disclosure cannot constitute an unjustified invasion of personal privacy, and neither of these exemptions applies.

DISCLOSURE OF NON-EXEMPT INFORMATION

In this order, I have not upheld any of the claimed exemptions with respect to Records 1, 2, 4, 5, 7, 13 and 15. No mandatory exemptions apply to these records. Accordingly, they should be disclosed to the appellant.

ORDER:

1. I uphold the OHRC's decision to deny access to Records 3, 6, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20 and 21.
2. I order the OHRC to disclose Records 1, 2, 4, 5, 7, 13 and 15 to the appellant, in their entirety, within twenty-one (21) days after the date of this order.
3. In order to verify compliance with Provision 2 of this order, I reserve the right to require the OHRC to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

John Higgins
Inquiry Officer

_____ August 4, 1995

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTIONS AT ISSUE	DECISION ON RECORD
1	Chronology of complaint (1 page)	14(1)(a), (b), (d), 49(a)	Disclose
2	Letter of March 20, 1992 from respondent's counsel to OHRC (1 page)	14(1)(a), (b), (d), 49(a)	Disclose
3	OHRC Report Re: Officer's Response to Parties' Submissions dated November 14, 1994 (1 page)	13(1), 14(1)(a), (b), (d), 14(2)(a), 49(a)	Decision upheld
4	Letter of November 8, 1994 from the OHRC to respondent's counsel (2 pages)	14(1)(a), (b), (d), 49(a)	Disclose
5	Letter of October 28, 1994 from the OHRC to respondent's counsel (1 page)	14(1)(a), (b), (d), 49(a)	Disclose
6	Letter of October 25, 1994 from respondent's counsel to the OHRC (2 pages)	14(1)(a), (b), (d), 49(a)	Decision upheld
7	Letter of October 7, 1994 from the OHRC to respondent's counsel (2 pages)	14(1)(a), (b), (d), 49(a)	Disclose
8	Letter of October 3, 1994 from respondent's counsel to the OHRC (3 pages)	14(1)(a), (b), (d), 49(a)	Decision upheld
9	Letter of September 21, 1994 from the OHRC to respondent's counsel (3 pages)	14(1)(a), (b), (d), 21(1), 49(a)	Decision upheld
10	Letter of September 9, 1994 from the OHRC to respondent's counsel (2 pages)	14(1)(a), (b), (d), 49(a)	Decision upheld
11	Letter of March 9, 1994 from respondent's counsel to the OHRC (3 pages)	14(1)(a), (b), (d), 21(1), 49(a) and (b)	Decision upheld
12	OHRC officer's handwritten notes dated February 7, 1994 Re: telephone conversation with respondent's counsel (1 page)	14(1)(a), (b), (d), 49(a)	Decision upheld
13	Letter of February 1, 1994 from the OHRC to respondent's counsel (2 pages)	14(1)(a), (b), (d), 21(1), 49(a) and (b)	Disclose

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTIONS AT ISSUE	DECISION ON RECORD
14	Letter of February 1, 1994 from the OHRC to respondent's counsel (2 pages)	14(1)(a), (b), (d) 21(1), 49(a)	Decision upheld
15	Letter of March 20, 1992 from respondent's counsel to the OHRC (1 page)	14(1)(a), (b), (d), 49(a)	Disclose
16	Letter of February 28, 1992 from respondent's counsel to the OHRC with attached OHRC officer's handwritten notes (2 pages)	14(1)(a), (b), (d), 49(a)	Decision upheld
17	Letter of January 23, 1992 from the OHRC to a named respondent enclosing complaint (2 pages)	14(1)(a), (b), (d), 49(a)	Decision upheld
18	Letter of January 23, 1992 from the OHRC to a named respondent enclosing complaint (2 pages)	14(1)(a), (b), (d), 49(a)	Decision upheld
19	Letter of January 23, 1992 from the OHRC to a named respondent enclosing complaint (2 pages)	14(1)(a), (b), (d), 49(a)	Decision upheld
20	Letter of January 23, 1992 from the OHRC to a named respondent enclosing complaint (2 pages)	14(1)(a), (b), (d), 49(a)	Decision upheld
21	OHRC officer's handwritten notes dated October 23, 1991 Re: telephone conversations with respondents (2 pages)	13(1), 14(1)(a), (b), (d), 21(1), 49(a) and (b)	Decision upheld