



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

ORDER P-1143

Appeal P-9500716

Ontario Human Rights Commission



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

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 report of the expert medical evidence” obtained by an OHRC Human Rights Officer during the investigation of a complaint by the requester. The record is a four-page letter dated May 15, 1995 from a medical doctor to the OHRC in which he sets out his views on the subject of heart valve replacement surgery for patients who are HIV-positive.

The OHRC denied access to the record, relying on the following exemptions contained in the Act:

- law enforcement - sections 14(1)(a) and (b)
- invasion of privacy - section 21(1)

The requester (now the appellant) appealed this decision.

A Notice of Inquiry was provided to the appellant, the OHRC and the doctor who prepared the record (the affected person). Representations were received from the appellant and the OHRC.

DISCUSSION:

LAW ENFORCEMENT

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

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). It has been previously established that OHRC investigations meet this definition (Order 89 and many subsequent orders) and I adopt this finding for the purposes of this order.

The purpose of sections 14(1)(a) and (b) is to provide the OHRC with the discretion to preclude access to records in circumstances where disclosure could reasonably be expected to interfere with an ongoing law enforcement matter or investigation.

The appellant submits that the disclosure of the record at issue would not interfere with an

ongoing investigation or a law enforcement matter. He submits that disclosure would enable all of the parties to the complaint to respond more effectively and thoroughly to the Human Rights Officer's report and participate in the decision to refer (or not to refer) the complaint to a Board of Inquiry under section 36(1) of the Human Rights Code.

The appellant further submits that the OHRC's refusal to provide a copy of the record at issue is a contravention of the principles of natural justice as it prejudices his ability to respond to the investigator's report.

In response to this latter point, the sole issue to be determined in this inquiry is whether the exemptions claimed by the OHRC apply to the record at issue. A finding as to the sufficiency of the disclosure of records made by the OHRC beyond the context of these provisions of the Act has no relevance to this appeal.

The OHRC submits that the record was generated as a result of its investigation into a complaint made by the appellant. The OHRC further submits that as the matter is now before it awaiting a decision on whether to refer the complaint to a Board of Inquiry, the law enforcement process remains ongoing.

The OHRC submits that source documents of the type at issue in this appeal are summarized in the Case Summary provided to all parties to the complaint, but are not disclosed to the parties. This is based on its standing investigation procedures, practices and policies which include provisions for the disclosure of certain types of documentation which are generated during the investigation stage. The standing policy does not include, however, the disclosure of documents such as the record at issue in this appeal. The OHRC submits that disclosure of this particular record would interfere with the ongoing investigation of the appellant's complaint by supplanting the administrative discretion which the OHRC is called upon to exercise by its governing legislation and would create uncertainty regarding the confidentiality of records at different stages of case proceedings.

The OHRC has described in great detail its adopted policies and procedures pertaining to the disclosure of documents which are compiled during the investigation stage of its process. In my view, however, the OHRC has not demonstrated with sufficient clarity how the disclosure of the record at issue could reasonably be expected to interfere with the investigation of the appellant's complaint or any other aspect of the law enforcement matter arising from his complaint. While the disclosure may have some impact on the OHRC's administrative processes, the OHRC has not explained how interference with the present investigation or matter would result from the disclosure of this record to this appellant. Having carefully reviewed the record at issue and the representations, I find that I have not been provided with sufficient evidence to establish that disclosure of the record could reasonably be expected to interfere with an ongoing law enforcement matter or investigation within the meaning of the Act. Therefore, the record does not qualify for exemption under sections 14(1)(a) or (b).

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded

information about an identifiable individual. The OHRC submits that the record, as it represents the medical opinion of the doctor who prepared it, contains his personal information and is, accordingly, exempt from disclosure under section 21(1) of the Act.

I cannot agree with this argument. The doctor was asked by the Human Rights Officer to express his professional opinion on several issues relating to the complaint filed by the appellant. The personal opinions of the doctor were not canvassed and are not expressed in the record. Nor is the record "about" any other identifiable individual. Accordingly, I find that the record does not contain any personal information and section 21(1) does not apply to exempt it from disclosure.

ORDER:

1. I order the OHRC to disclose the record to the appellant by **April 16, 1996** but not before **April 11, 1996** by sending him a copy of the record.
2. In order to verify compliance with the terms of this order, I reserve the right to order the OHRC to provide me with a copy of the record which is provided to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ March 12, 1996