



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

ORDER P-1204

Appeal P-9600116

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 “all of the original material on file which belongs to me and complete disclosure of all information in” a named OHRC investigation file in which the requester was the complainant. The OHRC responded by reminding the requester that access to all of his own documents, as well as other records were provided to him in response to an earlier access request under the Act. Further records of a general nature along with those documents which contain solely the personal information of the requester were disclosed to him at this time. However, the OHRC denied access to 106 pages of records, claiming the application of the following exemptions contained in the Act:

- advice or recommendations - section 13(1)
- law enforcement - section 14(2)(a)
- invasion of privacy - sections 21(1) and 49(b)

The requester (now the appellant) appealed the OHRC’s decision to deny access to the remaining records and also maintains that additional records responsive to his request should exist.

During the mediation of the appeal, the OHRC disclosed some of the records to the appellant, described by the OHRC as Pages 86-89, 96-99 and 101-106 in the index provided to the appellant and to this office.

A Notice of Inquiry was provided to the appellant, the OHRC and to 20 individuals whose rights may be affected by the disclosure of the records (the affected persons). Representations were received from the appellant, the OHRC and seven of the affected persons.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act defines “personal information”, in part, as recorded information about an identifiable individual. I have reviewed the records at issue and make the following findings:

- Pages 1, 2, 3, 4, 5, 25, 26, 27, 31, 76-79, 80 and 82-84 contain only the personal information of the appellant.
- Pages 29, 30, 32, 58, 60, 91 and 92 contain the personal information of one or more of the affected persons only.
- Pages 6, 7, 8, 9-18, 19-24, 28, 33-56, 62-67, 68-70, 72, 73, 74, 75, 85, 90 and 95 contain the personal information of the appellant and one or more of the affected persons.
- Pages 71, 81, 93 and 94 do not contain the personal information of any identifiable individuals.

INVASION OF PRIVACY

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.

Under section 49(a) of the Act, the OHRC has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information.

Under section 49(b) of the Act, where a record contains personal information of both the appellant and other individuals, and the OHRC determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the OHRC has the discretion to deny the appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to his or her own personal information, the only situation under section 49(b) in which he or she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

Where, however, the record contains only the personal information of other individuals, section 21(1) prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 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 circumstances that are relevant to the appeal.

The OHRC submits that the presumption in section 21(3)(b) applies to the information contained in Pages 2-24, 28, 31, 33-56, 57-61, 68, 70, 71, 72, 73, 74, 75, 85, 90, 91, 92 and 95 as this information was compiled and is identifiable as part of an investigation into a possible violation of law, in this case, the Ontario Human Rights Code, and that its disclosure would result in a presumed unjustified invasion of the personal privacy of the affected persons under section 21(3)(b) of the Act, which reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information, 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;

I have reviewed the records and find that the following pages, in whole or in part, fall within the ambit of the section 21(3)(b) presumption:

1. The names and addresses of the affected persons contained in Pages 6, 7 and 8.
2. Pages 9-18, 19-24, 28, 29, 30, 31, 32, 33-56, 62-67, 68-70, 72, 73, 74, 75, 85, 90, 91-92 and 95 in their entirety.
3. The name of one of the affected persons contained in Pages 58 and 60.

As a result, the disclosure of the personal information described above is presumed to constitute an unjustified invasion of the personal privacy of the affected persons. The appellant has not argued that any of the exceptions in section 21(4) apply to this information or that there exists any public interest in the disclosure of the records.

I find, therefore, that the information described above which is contained in Pages 6, 7, 8, 9-18, 19-24, 28, 33-56, 62-67, 68-70, 72, 73, 74, 75, 85, 90 and 95 is exempt from disclosure under section 49(b) of the Act. Further, I find that the information contained in Pages 29, 30, 31, 32, 58, 60, 91 and 92 is exempt from disclosure under section 21(1) of the Act.

ADVICE OR RECOMMENDATIONS/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

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.

The OHRC relies on this exemption with respect to Pages 1, 25, 26, 27, 76-79, 80 and 81-84. Page 1 is a memorandum alerting Commission staff as to a potential security problem. Pages 25 and 80 are draft decisions prepared by the Human Rights Officer for the Commission's decision-makers. Pages 26 and 27 and 76-79 are Investigation Plans prepared by the Human Rights Officer assigned to investigate the appellant's complaint. Pages 81-84 document various discussions amongst OHRC staff relating to the processing of the appellant's complaint.

I have carefully reviewed the information contained in each of these records and find that they qualify for exemption under section 13(1) of the Act because they describe a suggested course of action with respect to the OHRC's investigatory and decision-making processes as set forth in

the Ontario Human Rights Code. As these records qualify for exemption under section 13(1), they are exempt from disclosure under section 49(a).

Because of the manner in which I have addressed Pages 26, 27 and 76-79, it will not be necessary for me to address the possible application of section 14(2)(a) of the Act to these records.

REASONABLENESS OF SEARCH

The appellant submits that additional records beyond those already disclosed to him should exist and refers specifically to “draft copies for the judicial review”. Many of the records sought by the appellant have been disposed of in my discussion of the application of sections 21(1) and 49(b) above.

The OHRC has submitted an affidavit from its Freedom of Information and Privacy Protection Co-ordinator which states that all records responsive to the request in the appellant’s investigation file have either been provided to him or are the subject of this appeal. The Co-ordinator also states that the records referred to by the appellant as the “draft copies for the judicial review” are not contained in the investigation file. The Co-ordinator further makes reference to a notation in the file made by the Human Rights Officer responsible for conducting the investigation in which she states that the “Commission’s records do not contain draft copies for the judicial review” as is maintained by the appellant.

Where a requester provides sufficient details about the records which he or she is seeking and the OHRC indicates that such a record does not exist, it is my responsibility to ensure that the OHRC has made a reasonable search to identify any records which are responsive to the request. The Act does not require the OHRC to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the OHRC must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

I have considered the representations of the parties and I find that, with respect to any additional records pertaining to the appellant’s complaint before it, the OHRC’s search for these records was reasonable in the circumstances of this appeal. I further find that the OHRC has satisfied me that its search for “draft copies for the judicial review” was reasonable.

ORDER:

1. I uphold the decision of the OHRC to deny access to Pages 1, 9-18, 19-24, 25, 26, 27, 28, 29, 30, 31, 32, 33-56, 62-67, 68-70, 72, 73, 74, 75, 76-79, 80, 81, 82-84, 85, 90, 91, 92 and 95 in their entirety and those portions of Pages 6, 7, 8, 58 and 60 which contain the personal information of the affected persons.
2. I order the OHRC to disclose to the appellant Pages 2, 3, 4, 5, 57, 59, 61, 71, 93 and 94 in their entirety and those portions of Pages 6, 7, 8, 58 and 60 which do not contain the personal information of the affected persons by sending the appellant a copy by **July 18, 1996** but not before **July 15, 1996**.

3. The OHRC's search for responsive records was reasonable and this part of the appeal is dismissed.
4. In order to verify compliance with 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: _____
Donald Hale
Inquiry Officer

_____ June 13, 1996