



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

ORDER P-1341

Appeal P_9600320

Ontario Human Rights Commission



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NATURE OF THE APPEAL:

The appellant made two requests under the Freedom of Information and Protection of Privacy Act (the Act) to the Ontario Human Rights Commission (OHRC) for records relating to a complaint which she submitted to the OHRC.

The OHRC granted partial access to the records it identified as responsive to the requests. Access to the remaining records was denied based on the following exemptions:

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

The appellant appealed the OHRC's decision. The appellant was also of the view that additional records should exist which respond to the requests.

During mediation, the OHRC concluded that it had interpreted the requests too narrowly. Another search for records was conducted and additional records were located. Therefore, the appellant is no longer pursuing the issue of whether additional records exist. The OHRC issued a supplementary decision, granting partial access to the additional records. The OHRC is claiming the exemptions listed above and section 49(a) (discretion to refuse the requester's own information) for the additional records.

This office sent a Notice of Inquiry to the appellant, the OHRC and three persons whose information is contained in the records and whose interests may be affected by the disclosure of the records (the affected persons). Representations were received from all parties.

RECORDS:

The records consist of:

- two facsimile cover sheets, each with a one-page attachment
- three two-page letters addressed to parties in the OHRC complaint
- a Case Opening Statistical Data form
- a Record of Intake form
- six pages of officer's 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. The OHRC submits that Records 1-10 and 17-18 contain the personal information of the appellant and other individuals and that Records 13-16 contain the personal information of other individuals only.

The respondents in the appellant's Human Rights complaint are identified as the Alliance of Physiotherapy Regulatory Boards and the University of Toronto. The OHRC submits that the

records contain the personal information of four individuals employed by the respondents because the complaint is directed against them personally. The appellant submits that the complaint was against the **corporate** entities, not against particular individuals.

In my view, Records 1, 3, 5, 7, 9, 13, 15, 16 and 17 contain references to individuals who are acting in their professional capacity as representatives of the respondent organizations. Correspondence submitted to the OHRC by a representative of a group or association is not the personal information of the author of the correspondence (Order P-300). The same would apply to any references in the records to these persons in their official capacity. On this basis, I find that the records do not contain the personal information of the organizations' representatives.

Records 1, 2, 3, 6, 8, 10, 11, and 12 contain references to OHRC staff. As these references relate to these individuals in their professional capacity and to information provided as part of their employment responsibilities at the OHRC, they do not, in my opinion, constitute their personal information.

In summary, I find that Records 1-18 contain the personal information of the appellant only.

Because I have found that the records do not contain the personal information of individuals other than the appellant, I need not consider sections 21 or 49(b).

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

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. These include sections 13, 14(1)(a) and 14(1)(b) which the OHRC has applied to exempt certain of the records at issue.

ADVICE OR RECOMMENDATIONS

The OHRC claims that section 13(1) applies to Record 14.

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.

This exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making or policy making (Order 94).

Record 14 consists of one page of an OHRC case officer's handwritten notes. I have reviewed the contents of this record. It appears to contain questions/issues that the case officer noted to follow up with one of the respondent organizations. There is no evidence that this information was communicated from one person to another within the OHRC. Further, there is no indication of a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process. Accordingly, I find that page 14 is not exempt under section 13(1).

LAW ENFORCEMENT

The OHRC claims that sections 14(1)(a) and (b) apply to all of the records at issue. These sections 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 in many orders that OHRC investigations 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 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.

In its representations, the OHRC states:

Subsection 14(1)(a)(b) goes beyond the document and into the process. Thus a document in an active investigation file may appear "innocuous" to an outsider to our law enforcement process. However, the principle at stake goes beyond the mere appearance of a document and gnaws at the very root of the integrity of the process of an independent administrative agency and the policy considerations that went into the establishment of that process. An order by one administrative agency to disclose a document to one party to a case currently being investigated by another administrative agency, would erode the credibility of the institution in the eyes of the parties. It would supplant the administrative discretion that the Commission is called upon to exercise by its governing legislation. And because it renders the existing policy vulnerable to breaches by way of an appeal to the

Information & Privacy Commissioner, it will create uncertainty on the part of investigating officers as to the stability of existing Commission guidelines. Such harm meets the statutory requirement of "reasonable" interference under this subsection.

Section 34 of the Ontario Human Rights Code gives the OHRC discretion not to deal with a complaint in certain circumstances, such as where it appears to the OHRC that the subject matter of the complaint is not within the jurisdiction of the OHRC, is frivolous or vexatious, or where the complaint was filed more than six months after the facts on which the complaint is based occurred. The appellant argues that the file records all relate to the section 34 objection raised by the respondents.

Having carefully reviewed the records and the representations of the OHRC, I find that I have been provided with sufficient evidence to establish that disclosure of Records 1, 3, 5-10 and 12_18 could reasonably be expected to interfere with an ongoing law enforcement investigation. The remaining three records do not contain information the disclosure of which, in my view, could reasonably be expected to interfere with any investigation or matter.

Specifically, Record 2 is a page from a letter sent by the appellant, Record 4 is a form completed by the appellant, and Record 11 is a statistical data form on which is recorded the nature of the appellant's complaint. These records are not exempt and should be disclosed to the appellant. As I have found that Records 1, 3, 5-10 and 12-18 qualify for exemption under section 14(1)(a), they are exempt under section 49(a) of the Act.

ORDER:

1. I uphold the OHRC's decision not to disclose Records 1, 3, 5-10 and 12-18.
2. I order the OHRC to disclose Records 2, 4 and 11 to the appellant by sending her a copy **March 14, 1997**, but not earlier than **March 10, 1997**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the institution to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

February 7, 1997