



Information and Privacy
Commissioner/Ontario

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

ORDER P-1433

Appeal P_9700099

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 a named individual's (the affected person) complaint file, which the requester believes exists. The requester is a company that had interviewed the affected person for employment. The company is not seeking access to records relating to a complaint made by the affected person against it. Rather, the requester is seeking access to complaints made by the affected person against one or more of a number of other identified companies.

In response, the OHRC advised the requester that it was unable to confirm or deny the existence of any record relating to the affected person as this would constitute an unjustified invasion of privacy under section 21(1) of the Act. The requester (now the appellant) appealed this decision.

This office sent a Notice of Inquiry to the appellant and the OHRC. Only the OHRC provided representations in response to this notice.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF RECORDS

The OHRC relies on section 21 as the basis for refusing to confirm or deny whether any records responsive to the request exist. Specifically, section 21(5) states:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 21(5) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 21(5), the OHRC is denying the appellant the right to know whether the record exists, even if one does not.

For this reason, in relying on section 21(5), the OHRC must do more than merely indicate that the disclosure of the records, if they exist, would constitute an unjustified invasion of personal privacy. The OHRC must establish that the disclosure of the mere existence or non-existence of the requested records would convey information to the requester, the disclosure of which would constitute an unjustified invasion of personal privacy (Order M-328).

Accordingly, I will begin by considering whether the disclosure of records of the type requested, if they exist, would constitute an unjustified invasion of personal privacy. If the answer to this question is yes, I will then consider whether the disclosure of the existence or non-existence of records of the type requested would constitute an unjustified invasion of personal privacy.

An unjustified invasion of personal privacy can only result from the disclosure of personal information. Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

Records of the nature requested, if they exist, would contain information that the affected person had filed a human rights complaint. By its very nature a complaint file contains the identity of the complainant, the respondent(s), possible witnesses, the allegations/nature of the complaint raised by the complainant against the respondent(s), and the investigation of the complaint. I find that such information, if it exists, would qualify as the personal information of the affected person (as well as any other individuals identified in such records, if they exist).

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether 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 relevant circumstances.

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law (section 21(3)(b)). The OHRC submits that its mandate of investigation is a law enforcement matter. Any records of the nature requested, if they exist, would be compiled and would be identifiable as part of an investigation into a possible violation of the Ontario Human Rights Code (the Code).

I adopt and apply the findings in previous orders of this office that an investigation conducted by the OHRC into allegations of breaches of the Code constitutes an “investigation into a possible violation of law” for the purposes of section 21(3)(b) of the Act (Orders P-449, P-507 and P-510). I find that disclosure of any such records, if they exist, would constitute an unjustified invasion of personal privacy. Records of this type are not among those listed in section 21(4) and there is nothing to indicate that section 23 may be relevant in the circumstances of this appeal.

In regard to the second part of the analysis under section 21(5), the OHRC submits that disclosure of the mere existence or non-existence of responsive records would constitute an unjustified invasion of personal privacy. I find that such disclosure would reveal personal information about the affected person, namely, whether she had made a complaint to the OHRC. In the circumstances of this case, I find that disclosing the existence or non-existence of responsive records would constitute an unjustified invasion of personal privacy.

Therefore, I find that the OHRC has established the requirements for the application of section 21(5) of the Act in the circumstances of this appeal.

ORDER:

I uphold the decision of the OHRC.

Original signed by: _____

Laurel Cropley
Inquiry Officer

July 30, 1997