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

ORDER PO-1940

Appeal PA-000247-1

Ontario Human Rights Commission

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NATURE OF THE APPEAL:

The appellant submitted a request to the Ontario Human Rights Commission (the OHRC) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to copies of the minutes of an OHRC meeting relating to four cases in which the appellant had filed complaints against four named staff members.

The OHRC granted partial access to the records requested, severing the names of the commissioners present at the meeting and the name of one staff person (the affected persons), from the minutes of the OHRC meeting. No exemptions were cited in the original decision letter. In a revised decision, the OHRC indicated that it was relying on section 20 (threat to health and safety) of the *Act* in refusing to provide the appellant with the names of the affected persons.

The appellant appealed the OHRC's decision to sever the names of the affected persons from the OHRC meeting minutes.

I sent a Notice of Inquiry to the OHRC and affected persons, initially. Because it appeared that the record may contain the personal information of the appellant, I asked the parties to also consider the possible application of section 49(a) to the record.

The OHRC replied, on its own behalf and on behalf of the affected persons, as follows:

> This refusal does not impede the complainant's ability to any appeal or judicial recourse. The Commission does not see any justifiable need for the individual to have access to the names of those present at the meeting, other than to possibly harass those individuals.
>
> The Commission's position is entirely consistent with a decision previously taken by the IPC, with regard to a previous FOI request (by the same complainant) to release the names of legal counsel acting on behalf of respondents in this case. The IPC ruled that no access to the names would be granted (Appeal PA-990255-1, Order PO-1787).

In raising the relevancy of the circumstances in appeal PA-990255-1, the OHRC appears to be relying on the evidence that was before the Adjudicator in that appeal.

I subsequently decided to seek representations from the appellant. In doing so, I put the appellant on notice that, in addition to the information submitted by the OHRC in this appeal, I was contemplating taking into consideration several categories of information of which I am aware as a result of the numerous appeals the appellant has filed with this office, including those with which I have dealt. I then set out, in detail, the specific evidence which might be relevant. In responding to the issues in this appeal, I invited the appellant to:

1. address the incorporation of this evidence into the current appeal; and

2. explain why he believes the circumstances in the current appeal warrant a different approach.

The appellant submitted representations in response.

RECORDS:

The record at issue in this appeal consists of the minutes of an OHRC Meeting dated May 31, 2000, relating to four cases in which the requester had filed complaints against four named OHRC staff members. The only information at issue is the names of the affected persons which have been severed from this record.

The appellant had originally requested "disclosure of Commission's Meeting Records for my Decisions Dated June 9, 2000. . . . .". The standard form "reasons" for the decisions in question were dated June 9, 2000, but the actual records of the Commission's meeting were the minutes of the meeting, dated May 31, 2000. The OHRC's revised decision of August 15, 2000 mistakenly refers to the *minutes* as being dated June 9, 2000. The records which the parties have indicated are the responsive records in this appeal, are the minutes of the OHRC meeting dated May 31, 2000.

PRELIMINARY MATTER:

THE EVIDENCE THAT I INTEND TO CONSIDER IN THIS APPEAL

In the Notice of Inquiry that I sent to the appellant, I advised him that I am considering incorporating the evidence submitted in appeal PA-990255-1 into the current appeal. I noted further that the appellant has filed several other appeals in connection with the issues in Appeal PA-990255-1 and, indirectly, the issues in the current appeal. I indicated that I had reviewed all of these appeal files and any orders or decisions resulting from them. In doing so, I concluded that the evidence submitted in these appeals and the findings in their related orders may be relevant in the circumstances of the current appeal.

My reasons for contemplating considering the inclusion of all of this evidence were set out in the Notice of Inquiry that was sent to the appellant and, as I indicated above, he was given an opportunity to address this issue in detail. In responding to the Notice of Inquiry, the appellant writes:

> As the above Appeal has nothing to do with the deceased PA-990255-1, PA-000156-1& PA-000157-1, PA-000232-1, PA-000210-1, PA-990255-2 and the now separately-inquired PA-000323-1, I am not going to participate in IPC recycled screenplays with its expertise of universal relevancy theory to recycle the now-defunct appeals except the living PA-000247-1 currently being inquired...

In a separate letter to Commissioner Ann Cavoukian (which was forwarded to my attention as it appeared to respond to the issues in this appeal), the appellant states:

> Each of my Appeals has its independent objective. Should there be some relevancy, it would be PA-990255-1, PA-000232-1 and PA-990255-2, in which the identity of Bi-Way anonymous human rights lawyer were sought. But, they are all dead with no miracle to be resurrected. I won't be an actor to act for your adjudicator in her recycled screenplays. I have enough with my Appeals to be dumped into your recycle bins and retrieved to recycle again and again in the past two years. What a freaky information watchdog!
>
> Your adjudicator is acting as a veterinarian to tell me that my five horses died months or a year ago can be resuscitated to start breathing again and, also, trying to replace two of my surviving horses with donkeys for me to ride in the racetrack. I realize your adjudicator is poised to revive one of the dead horses to provide me with a dreaming horse I am after until the time when racing season is over and the racetrack is closed.

In Brown & Evans, *Judicial Review of Administrative Action in Canada* (Vol. 2), (Toronto: Canvasback Publishing, 1998) (looseleaf), the authors discuss the principle of "fairness" in the administrative decision-making process (at Chap. 12 – 1):

> Traditionally, procedural fairness has been viewed to pertain to the parties' right to an effective opportunity to participate in the decision-making process through the presentation of evidence and argument, and through the requirement of impartiality in the decision-maker. In addition, there are other aspects of the law which are designed to prevent the conduct of the tribunal from undermining the participatory rights required by the duty of procedural fairness … These principles and rules relate to five related aspects of the decision-making process: [including] the gathering of information …

They also comment on the extent to which administrative adjudicators may make use of information not adduced by the parties to a proceeding (at Chap. 12 – 2 to 4):

> If adjudicative decision-makers are permitted to unilaterally conduct their own investigations, the ability of parties to participate in the decision-making process through the presentation of proofs and argument to neutral decision-makers may be impaired …
>
> As a result, when performing essentially adjudicative functions, administrative decision-makers, like judges, are generally precluded from *ex parte* fact-finding …
>
> …
>
> The general rule proscribing *ex parte* evidence-gathering is qualified, however, to the extent that it is permissible for administrative adjudicators to make use of

> information that can be judicially noticed … And because tribunals have often been established in order to provide more specialized decision-making, and sometimes to escape the adversarial procedural model of the courts, it may be that their members may take notice of a wider range of information than that within the narrowly-circumscribed scope of judicial notice. As well, of course, tribunal members may draw on their experience to assist them in assessing the evidence that they have heard, including their awareness of relevant published material that may suggest principles to guide them in the exercise of their discretion.

The authors note that authority to take official notice of facts may arise by statute or as a matter of common law. In either case, however, they indicate that (at Chap. 12 – 5):

> [A] tribunal should strive to inform the parties of its intention to take official notice of facts, and to provide them an opportunity to comment on the material, … as a matter of fairness.

As an administrative tribunal, the Information and Privacy Commissioner (the IPC) functions in a somewhat different capacity from other tribunals. While the majority of administrative tribunals operate under an "adversarial" model, the IPC has "inquisitorial" elements. Although the rules of natural justice and procedural fairness applicable to other tribunals similarly apply to IPC inquiry processes, the extent to which an adjudicator may "inquire", on his or her own initiative, into the issues on appeal is heightened under this model.

The consideration of evidence obtained in other appeals is somewhat outside the normal practice for this office, primarily because the issues in one appeal do not necessarily reflect on the issues in another. In addition, the principle that each case should be decided on its own facts is not one to be lightly tampered with. There are, however, circumstances where prior requests and/or appeals made by an appellant are relevant to the issues in an appeal. For example, an institution's claim that a request is frivolous or vexatious under section 27.1 of the *Act* may, in part, be based on prior requests and/or appeals. In these situations, previous requests and appeals are often referred to in order to establish a "pattern of conduct" on the part of a requester in support of the claim.

Similarly, in the circumstances of the current appeal, the previous appeals filed by the appellant are relevant in considering a pattern of conduct on the part of the appellant which may support a finding that disclosure of the requested information could reasonably be expected to threaten the health or safety of an individual (under section 20 of the *Act*).

The Court of Appeal for Ontario [in *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) (C.A.) at 395, affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)] has drawn a distinction between the interests being protected under section 20 and the harms "that could reasonably be expected to" occur under other exemptions. In this regard, the Court noted that the interests at stake in cases where the anticipated harm relates to financial loss, for example, are less compelling than those of personal safety and bodily integrity (see the Court's discussion at pages

403 and 404). Since I am clearly aware of the issues raised in previous appeals relating to this issue because of my own involvement in dealing with some of them, I would be remiss in not considering the possible impact of the evidence obtained in them in assessing whether the issues in the current appeal raise similar concerns.

As I indicated above, the appellant was put on notice that I intended to consider taking this approach to the issues in this appeal. He was provided with detailed information regarding the specific evidence I was contemplating considering and he was given sufficient time to address both the process and the evidence itself in his representations. In my view, neither the process nor its implementation is unfair to the appellant.

After considering the appellant's views on this issue and the overall circumstances of this appeal, I have decided to incorporate the evidence from previous appeals as part of the overall body of evidence before me. I have set this evidence out below under the heading "Discretion to refuse requester's own information/Danger to safety or health".

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/DANGER TO SAFETY OR HEALTH

Section 2(1) of the *Act* defines "personal information" in part as "recorded information about an identifiable individual".

The record at issue in this appeal consists of the names of the individuals who attended a meeting relating to four complaints made against OHRC staff. The appellant was provided with a copy of the rest of this record. The record refers to discussions about the appellant's complaints and as such contains his personal information. The individuals referred to in the record are so noted in their official capacity with the OHRC. Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official capacity, and found that in some circumstances, information associated with a person in his or her professional or official capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition of "personal information" (See Orders P-257, P-427, P-1412 and P-1621). The record contains the minutes of an OHRC meeting on which those attending and participating are duly noted. In the circumstances of this appeal, I find that, consistent with previous orders, this information does not qualify as their personal information.

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. 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 an individual access to their own personal information in instances where certain exemptions, including section 20, would apply to the disclosure of that information.

Section 20 of the *Act* provides:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The words "could reasonably be expected to" appear in the preamble of section 20, as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner*) (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour)*].

As I noted above, however, in *Ontario (Minister of Labour)*, the Court of Appeal for Ontario drew a distinction between the requirements for establishing "health or safety" harms under sections 14(1)(e) and 20, and harms under other exemptions. The court stated (at pp. 403-404):

> The expectation of harm must be reasonable, but it need not be probable. Section 14(1)(e) requires a determination of whether there is a reasonable basis for concluding that disclosure could be expected to endanger the life or physical safety of a person. In other words, the party resisting disclosure must demonstrate that the reasons for resisting disclosure is not a frivolous or exaggerated expectation of endangerment to safety. Similarly [section] 20 calls for a demonstration that disclosure could reasonably be expected to seriously threaten the safety or health of an individual, as opposed to there being a groundless or exaggerated expectation of a threat to safety. Introducing the element of probability in this assessment is not appropriate considering the interests that are at stake, particularly the very significant interest of bodily integrity. It is difficult, if not impossible, to establish as a matter of probabilities that a person's life or safety will be endangered by the release of a potentially inflammatory record. Where there is a reasonable basis for believing that a person's safety will be endangered by disclosing a record, the holder of that record properly invokes [sections] 14(1)(e) or 20 to refuse disclosure.

Despite this distinction, "detailed and convincing evidence" of a reasonable expectation of harm is still required in order to establish the application of section 20. This evidence must demonstrate that there is a reasonable basis for believing that endangerment could be expected to result from disclosure or, in other words, that the reasons for resisting disclosure are not frivolous or exaggerated.

[See Orders MO-1262 and PO-1747]

With respect to this issue, the appellant states:

> IPC's statutory mandate is to adjudicate whether or not the Commissioner's and staff's names fall into the category of personal information in this appeal. IPC does not have the statutory mandate to act as a judge to judge whether or not the

> evidence of appellant's violent behaviour records provided by OHRC pose a threat to the Commissioners and the staff's safety or health. If IPC is convinced by the OHRC's and Bi-Way lawyer's submissions that the appellant is a potential Commissioners' killer, IPC should refer the case to police. Since the Commissioners are appointed by the Lieutenant Governor in Council, I am sure police will seriously deal with the case to eradicate the potential safety threat.

The following is a list of the relevant appeals, the evidence from which I intend to consider in determining whether section 20 applies to the appellant's personal information in the circumstances of this appeal.

Appeal PA-990255-1

Date of Request - January 2, 1998
IPC Decision - Order PO-1787, dated May 18, 2000

The appellant requested from the OHRC, among other things, the name and address of the anonymous writer of a statement relating to File No. GGON-3KVL29.

Appeals PA-000156-1 and PA-000157-1

Dates of Requests - February 23, 2000 and March 9, 2000, respectively
IPC Decision - Order PO-1858, dated January 22, 2001

In Appeal PA-000156-1, the appellant requested "evidence as the reasons" for decision of the OHRC dated November 23, 1999, File No. GGON-3KVL29. In Appeal PA-000157-1, the appellant requested "the following evidences and insufficient evidence indicated by the Commission's negative decision dated November 23, 1999 File No. GGON-3KVLHX.

Appeal PA-000232-1

Date of Request - May 16, 2000
IPC Decision - Summary Dismissal Letter, dated October 25, 2000

The appellant requested records of precedents for practicing blackouts of the names of affected respondents and their counsel, witnesses, etc. in responses to the complainant and OHRC decisions over its 38 year history. The OHRC attempted to respond to his queries, in part, but the appellant was not satisfied. The OHRC also indicated that it would not process the second part of his request.

Appeal PA-000210-1

Date of Request - June 28, 2000
IPC Decision - Order PO-1812, dated August 4, 2000

The appellant requested from the OHRC a copy of the unsevered representations, dated January 5, 2000, that it submitted to the IPC in response to Appeal PA-990255-1. Portions of the OHRC's representations were withheld by Adjudicator Big Canoe during the sharing of representations process.

Appeal PA-990255-2

Date of Appeal - June 7, 2000
IPC Decision - Order PO-1867, dated February 15, 2001

The appellant submitted an appeal to the IPC in relation to the decision of the OHRC following Order PO-1787. Adjudicator Big Canoe had ordered the OHRC to exercise its discretion under section 14(1)(e).

Appeal PA-000323-1

Date of Request - August 23, 2000
IPC Decision - currently at the inquiry stage

The appellant requested, among other things, copies of the two mediation staff reports to the IPC recording his past behaviour and continuing propensity of such type of behaviour that were mentioned in the OHRC's letter dated July 26, 2000 (the OHRC's representations submitted in response to the Notice of Inquiry for Appeal PA-990255-2).

I intend to determine the issues in Appeal PA-000323-1 and the current appeal concurrently (although I will address the specific issues in each appeal in separate orders) and will consider the totality of the evidence presented by the parties and contained in the above noted appeals in arriving at my decision in each appeal.

Discussion and Findings

Chronology of events

The appellant's involvement with the OHRC began in 1997 when he brought two complaints under the *Human Rights Code* (the *Code*) against a named store (complaint GGON 3KVL29) and a named security company (complaint GGON 3KVLHX). It appears that the OHRC provided him with a severed copy of the respondent's response in December 1997.

On January 2, 1998, the appellant submitted his first access request to the OHRC for, among other things, the name and address of the "anonymous" writer of a statement relating to his

complaint GGON 3KVL29 (Appeal PA-990255-1). The information at issue consisted of the name of the lawyer who made the submission to the OHRC on behalf of the respondent to the appellant's complaint.

According to the OHRC (as stated in its representations in response to Appeals PA-000156-1 and PA-000157-1), the appellant's complaints underwent the usual investigation and conciliation process under the *Code* and on November 23, 1999, decisions adverse to him were issued pursuant to section 36 of the *Code*. The appellant applied for reconsideration of these decisions under section 37 of the *Code*.

During the time in which the OHRC was processing his human rights complaints and access requests, the appellant brought complaints under the *Code* against a number of OHRC staff members relating to their treatment of him. The staff members had dealt with the appellant in varying capacities.

In February and March of 2000, he submitted two requests to the OHRC under the *Act* seeking the "evidence" which formed the basis for the section 36 decisions made under the *Code* (Appeals PA-000156-1 and PA-000157-1). Some of the information at issue in these two appeals is identical to that at issue in Appeal PA-990255-1, specifically, the identity of the lawyer.

During this time, Adjudicator Big Canoe was seeking representations from the parties in Appeal PA-990155-1. As part of this process, she provided the appellant with the severed representations of the OHRC after determining that portions of them should be withheld due to confidentiality concerns. She issued her order (PO-1787) on May 18, 2000. In her decision, Adjudicator Big Canoe ordered the OHRC to exercise its discretion with respect to the application of section 14(1)(e) to the name and address of the lawyer. The OHRC did so and issued a further decision to the appellant in which it indicated that it had exercised its discretion in favour of continued non-disclosure. Immediately upon receipt of this decision (June 7, 2000), the appellant initiated a further appeal of the OHRC's exercise of discretion (Appeal PA-990255-2).

On June 28, 2000, the appellant submitted a request to the OHRC for an unsevered copy of the representations it submitted in response to Appeal PA-990255-1 (Appeal PA-000210-1). The information at issue in this appeal is identical to that in Appeals PA-990255-1 and PA-000156-1.

Also in June, 2000, the appellant submitted a request for the minutes of an OHRC meeting relating to the four complaints he had filed against OHRC staff (Appeal PA-000247-1, the current appeal). The appellant received a copy of the information contained in the minutes. Only the names of those attending the meeting are at issue in this appeal.

In order to dispose of the issues in Appeal PA-990255-2, I sought representations from the OHRC which I then shared, in part, with the appellant. I decided to withhold two statements made by staff based on confidentiality concerns. The appellant immediately submitted a request to the OHRC for, among other things, a copy of these two statements (Appeal PA-000323-1).

The statements were made by two of the OHRC staff against whom the appellant made a complaint.

The appellant has filed several other appeals with this office from decisions of the OHRC made during this time frame which, although not all directly seeking information about identifiable individuals, reflect his focussed and persistent attempts to address the issues in the former group of appeals (Appeals PA-990233-1, PA-000161-1, PA-000162-1 and PA-000232-1). When viewed as a whole, the eleven appeals the appellant has initiated since 1998 demonstrate the intensity of his feelings of "persecution" at the hands of the various individuals who have dealt with him in his "quest for justice".

IPC Decisions

In Order PO-1787 (Appeal PA-990255-1) issued May 18, 2000, Adjudicator Big Canoe found that section 14(1)(e) (endanger life or safety) applied to the information that would identify the lawyer and ordered the OHRC to exercise its discretion under this section. In making this finding, she stated:

> As indicated above, the lawyer submits that disclosure of the information at issue would enable the appellant to contact him. The OHRC and the lawyer submit that the records show that the appellant has in the past exhibited violent behaviour against those whom he perceives have not treated him fairly. Both the OHRC and the lawyer believe that the appellant views the lawyer as "the prime culprit" in the matter. The lawyer indicates that if the record was disclosed, he would be exposed to physical danger and may have to undertake security measures to protect himself.
>
> In the circumstances, I find that the OHRC and the lawyer have demonstrated that the reasons for resisting disclosure is not a frivolous or exaggerated expectation of endangerment to safety. I am satisfied that there is a reasonable basis for believing that disclosure could be expected to endanger the lawyer's personal safety, and I find that section 14(1)(e) applies.

Despite this decision, the appellant pursued the same information in Appeal PA-000210-1.

In Order PO-1812 (Appeal PA-000210-1) issued August 4, 2000, Adjudicator Donald Hale upheld the OHRC's decision under section 14(1)(e) and 49(a) of the *Act*. In making this decision, Adjudicator Hale stated:

> In my discussion of "personal information" above, I noted that the information contained in the record at issue in this appeal was similar in character to that which was the subject of the record in Order PO-1787. The disclosure of the record at issue in this appeal would serve to identify the affected person, as was the case in the earlier decision.

> The appellant has made extensive representations in support of his claim that he does not pose a threat to anyone. He has provided me with several medical reports and has disclosed his age to further his argument that he is not capable of harming anyone and would not do so regardless.
>
> I have reviewed the evidence tendered by the OHRC and the affected person in Appeal Number PA-990255-1 in support of their contention that the record at issue in that appeal is exempt from disclosure under section 14(1)(e). I adopt the findings of Adjudicator Big Canoe in Order PO-1787 with respect to the reasonableness of the OHRC and the affected person's concern for his/her safety. I am not persuaded by the evidence tendered by the appellant that I should find differently. Again, I reiterate that Adjudicator Big Canoe, in her decision concerning access to the OHRC's submissions in Appeal Number PA-990255-1 (which is the record at issue in this appeal), determined that only portions of the OHRC's representations should be made available to the appellant, due to concerns which she had about the confidentiality of the severed portions. In my view, that decision was reasonable and in keeping with her final decision in Order PO-1787 in which she held that information which would disclose the identity and extent of involvement of the affected person in the OHRC matter was exempt under section 14(1)(e).
>
> I adopt those findings for the purposes of the present appeal and have determined that the record at issue in this appeal also qualifies for exemption under section 14(1)(e). The OHRC has made submissions with respect to its exercise of discretion under section 49(a) in its decision letter and subsequent correspondence filed with this office. I am satisfied that the OHRC exercised its discretion in a proper manner and will not disturb it on appeal. Because the record qualifies for exemption under section 14(1)(e), I find that it is properly exempt under section 49(a).

The appellant continued to pursue this same information in Appeal PA-000156-1.

In Order PO-1858 (Appeals PA-000156-1 and PA-000157-1) issued on January 22, 2001, Adjudicator Hale upheld the decision of the OHRC to withhold the requested information, in part, on the basis of section 14(1)(e) of the *Act*. In his decision, Adjudicator Hale concluded:

> In my view, the concerns expressed by Adjudicator Big Canoe and myself in Orders PO-1787 and PO-1812 respectively remain at the present time. The appellant's representations and the fact that another appeal respecting the same information is before this office make it very clear that he continues to seek to ascertain the name and address of the respondent's counsel with equal vigour. Based on the appellant's submissions and those of the OHRC and the respondent's counsel, as well as the findings in the earlier decisions, I find that the information contained in Record 1(A) with respect to the identity and whereabouts of counsel for the respondent continues to qualify for exemption

under section 14(1)(e). Accordingly, I find that this information is exempt under the discretionary exemption in section 49(a).

Finally, in Order PO-1867 (Appeal PA-990255-2) issued on February 15, 2001, I upheld the OHRC's exercise of discretion, stating:

> The OHRC indicates that the head reconsidered his original decision in light of Order PO-1787. In this regard, the OHRC notes that in exercising his discretion not to disclose the information at issue to the appellant the head took a number of factors into consideration, including: the concerns expressed by the affected person; the past threatening and violent behaviour exhibited by the appellant against those whom he perceives as not having treated him fairly; the experiences of OHRC mediation staff who were previously involved in processing the appellant's human rights complaint and the Adjudicator's findings in Order PO-1787.
>
> In support of the head's decision on the exercise of discretion, the OHRC provided several staff reports about the appellant to the Commissioner's office. These reports reflect staff's concern regarding the appellant's behaviour during their contact with him.
>
> The OHRC indicates that it was particularly relevant to the head that the appellant is specifically seeking the identity and whereabouts of a particular individual "who in the mind of the requester is the 'prime culprit' in the unfairness he perceives".
>
> The OHRC indicates further that the head considered the fact that the appellant has received full disclosure of the investigation findings regarding his complaint and considered whether disclosure of the information at issue was crucial to the appellant's right to know the case against him or to enable him to respond to the issues in his human rights complaint. The head came to the conclusion that this information was not relevant to the complaint itself and decided that, in the circumstances, the appellant's "right to know does not override considerations of health and safety risks where such apprehension by the affected third person has a reasonable basis in fact".
>
> The appellant takes issue, first, with Adjudicator Big Canoe's findings regarding the application of section 14(1)(e) as well as any evidence presented that would tend to support such a finding. He also complains about the manner in which he has been dealt with by the OHRC and by all involved parties generally and submits that his human and *Charter* rights have been infringed by such treatment. In essence, he feels that he has been dealt with unfairly and that the actions of the OHRC and the Commissioner's office are "illegal" and improper.

> Based on the submissions of the OHRC, I am satisfied that the head has taken appropriate considerations into account in exercising his discretion not to disclose the information to the appellant. Accordingly, I find that the head's exercise of discretion under section 14(1)(e) should not be disturbed.

In each of the above cases, the appellant submitted at times extensive representations relating to the application of section 14(1)(e) to the identity of the lawyer. In each case, the adjudicator considered his representations but ultimately came to the same conclusion. While the submissions made by the OHRC and the lawyer were persuasive in the final analysis, the representations submitted by the appellant, in my view, help put the former submissions into perspective and provide some insight into the issue of whether the reasons for resisting disclosure are frivolous or exaggerated.

For example, in his representations dated December 28, 2000, submitted in response to Appeal PA-000156-1, the appellant wrote:

> So far, I have been able to submit 11 counts of human rights complaints against OHRC staff, one Law Society complaint against the head of OHRC and 3 counts of human rights complaints against IPC staff because I know their names. Despite my complaints, all of them are safely enjoying working as usual in OHRC and IPC. Thus far, none of them has ever raised the issue that his/her life is being threatened by the complainant and needs to call for police protection. Should you have changed your mind to release the name of Bi-way lawyer, I will guarantee that she/he will be treated equally and safely as the head of OHRC to be exalted to the Law Society.

The records at issue in the appeals which concerned his original OHRC complaints against the store and security company, many of which have been disclosed to him, describe an event involving the appellant in which he exhibits violent behaviour. As I noted in Order PO-1867, the statements provided by the OHRC with its representations (which are the records at issue in Appeal PA-000323-1) reflect staff's' concerns regarding the appellant's behaviour during their contact with him. In my view, the records themselves provide evidence which tends to support a concern regarding the appellant's behaviour as posing a threat to the safety of individuals who appear to oppose his interests.

Further, the persistence exhibited by the appellant in attempting to obtain the same information over and over again with, as Adjudicator Hale observed, equal vigour further supports the concerns raised by the records. It appears that the appellant has now, for the moment, changed his focus to the OHRC staff against whom he has complained.

On May 23, June 1 and June 18 2000, the appellant wrote to this office complaining about the decision in Order PO-1787 and asking a number of questions requiring the IPC to "justify" various procedural steps taken during the processing of his appeal as well as the adjudicator's decision. In each case the IPC's Registrar responded to the appellant advising him that the appeal was closed and informing him of his options if he is dissatisfied with the decision.

It is clear from the appellant's letters that he feels particularly aggrieved by the decision of Adjudicator Big Canoe to uphold the OHRC's decision to withhold the name of the lawyer. His persistence and his vehemence in expressing his displeasure attests to the degree to which he is focussed on these issues. Indeed, this sequence of letters is indicative of his pursuit of identifying information taken as a whole.

The correspondence from the appellant contained in various appeal files, directed in part to the OHRC and the IPC, depicts a very angry individual. His correspondence contains scathing, and at times hurtful attacks on specifically named individuals. The tenor of many of his letters is aggressive, if not abusive and intimidating. His correspondence generally reflects a pattern on his part of bringing complaints against individuals he has had contact with on an official (or other) basis over the past few years who have, in some way, displeased him.

In my view, given the prior documented experiences some of these people and others have had with the appellant, the concerns expressed cannot be said to be frivolous or exaggerated. Despite the appellant's assertions that he would not harm anyone, there is every indication from his pattern of conduct in pursuing information about specific individuals, that he will persevere in his quest in a similar manner.

It is apparent that every action taken by either the OHRC or the IPC in dealing with his OHRC complaint and/or requests has incited further response from him as part of a pattern in objecting to the process and the decisions that are made. In my view, his insistence on using the *Act* to further his quarrels borders on an abuse of the right of access under the *Act*. It also supports a concern that is neither frivolous nor exaggerated, that disclosure of the requested information could reasonably be expected to endanger the safety of the individuals referred to in them.

In coming to this conclusion, it is noteworthy to add (in response to the appellant's assertions that he would not physically attack anyone) that a threat to safety as contemplated by section 20 is not restricted to an "actual" physical attack. Where an individual's behaviour is such that the recipient reasonably perceives it as a "threat" to his or her safety, the requirements of this section have been satisfied. As the Court of Appeal found in *Ontario (Minister of Labour):*

> It is difficult, if not impossible, to establish as a matter of probabilities that a person's life or safety will be endangered by the release of a potentially inflammatory record. Where there is a reasonable basis for believing that a person's safety will be endangered by disclosing a record, the holder of that record properly invokes [sections] 14(1)(e) or 20 to refuse disclosure.

Consequently, based on all of the evidence before me, I conclude that there is a reasonable basis for believing that endangerment could be expected to result from disclosure of the information at issue. The record at issue in this appeal, therefore, qualifies for exemption under section 20.

Exercise of Discretion under sections 20 and 49(a)

As I indicated above, section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. This reflects one of the primary purposes of the *Act* as set out in section 1, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure.

Under section 49(a) of the *Act*, the OHRC has the discretion to deny an individual access to their own personal information in instances where certain exemptions, including section 20, would apply to the disclosure of that information. In addition, section 20 is, in and of itself, a discretionary exemption.

In Order P-344, Assistant Commissioner Tom Mitchinson considered the question of the proper exercise of discretion under sections 14 (law enforcement) and 49(a) of the *Act*:

> ... In order to preserve the discretionary aspect of a decision ... the head must take into consideration factors personal to the requester, and must ensure that the decision conforms to the policies, objects and provisions of the *Act*.
>
> In considering whether or not to apply [certain discretionary exemptions], a head must be governed by the principles that information should be available to the public; that individuals should have access to their own personal information; and that exemptions to access should be limited and specific. Further, the head must consider the individual circumstances of the request.

The OHRC's representations do not specifically refer to its exercise of discretion in deciding to withhold the information at issue from disclosure. However, in responding to the other appeals brought by the appellant and considered in the current appeal, the OHRC has described the manner in which it has exercised its discretion to refuse access to the requested information in those cases. As the representations submitted in response to these other appeals have been incorporated into this appeal, I am satisfied that they sufficiently address this issue for the purposes of this appeal. I find further that they are relevant to the exercise of discretion in the current appeal. Accordingly, similar to my findings in Order PO-1867, I am satisfied that the head has taken appropriate considerations into account in exercising his discretion not to disclose the information at issue to the appellant under both sections 20 and 49(a) and the head's decision should not be disturbed.

ORDER:

I uphold the OHRC's decision to withhold the record at issue from the appellant.

Original signed by: August 23, 2001
Laurel Cropley
Adjudicator

POSTSCRIPT:

There are occasions where staff working in "public" offices, and particularly in places such as the OHRC or indeed in places like the IPC will be required to deal with "difficult" clients. In these cases, individuals are often angry and frustrated, are perhaps inclined to using injudicious language, to raise their voices and even to use apparently aggressive body language and gestures. In my view, simply exhibiting inappropriate behaviour in his or her dealings with staff in these offices is not sufficient to engage a section 20 or 14(1)(e) claim. Rather, as was the case in this appeal, there must be clear and direct evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established.