



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2220

Appeal PA-030101-2

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 “any type of information pertaining to me, or associated with myself that you currently have, or have had, or have access to.” The requester also posed a series of seven questions related to any documents found to be responsive to the request.

The OHRC identified a number of responsive records and granted access to some of them. Access to the remaining records was denied on the basis that the information was exempt from disclosure under the discretionary exemption in section 49(a) of the *Act* (discretion to refuse requester’s own information), taken in conjunction with section 13(1) of the *Act* (advice or recommendations). The OHRC also indicated that it had located ten audio tapes and was prepared to release them to the requester, but did not wish to make copies for her.

The requester, now the appellant, appealed the OHRC’s decision on the basis that the exemptions claimed did not apply to the records. The appellant also takes the position that additional records should exist and that the OHRC is obliged to make copies of the audiotapes rather than providing her with the originals.

Mediation of the appeal was not possible and the matter was moved to the adjudication stage of the appeals process. I decided to seek the representations of the OHRC initially. The OHRC provided me with representations and advised that it had disclosed the seven records at issue to the appellant. Accordingly, the only issue remaining in this appeal is whether the OHRC’s search for responsive records was reasonable. I then sent the appellant a Notice of Inquiry along with the complete representations of the OHRC. The appellant did not respond to the Notice.

DISCUSSION:

REASONABLENESS OF SEARCH

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the OHRC has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the OHRC will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records which he/she is seeking and the OHRC indicates that further records do 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 further records do 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.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Representations of the OHRC

The OHRC submits that in response to the appellant's request:

The Compliance Officer initially conducted a search of the Institution's database to determine if the appellant has ever filed a complaint with the Commission or had ever been named as a respondent or a witness in another human rights complaint. This search did not produce any results as there are no records in the Commission's database citing the appellant as either a complainant, a respondent or a witness in a human rights complaint.

On April 2, 2003, the Compliance Officer received several emails from Commission staff outlining their dealings with the appellant. Copies of these emails were the records at issue in this appeal and as discussed above, have since been disclosed to the appellant.

The Compliance Officer then determined that the appellant's concerns were being handled by the Institution's Supervisor of Inquiries. The Compliance Officer then met with this individual to ascertain the extent of her dealings with the appellant and obtained copies of all of the records pertaining to the appellant that were in the possession of the Supervisor of Inquiries. The Supervisor of Inquiries also indicated to the Compliance Officer that she was in possession of 9 audio cassette tapes that had been submitted to her by the appellant.

The OHRC indicates that it is prepared to return the audiotapes to the appellant but that it is not obliged to make copies of them for her. Rather, the OHRC takes the position that it will return the audiotapes to the appellant and she can then make copies and provide the copies to the OHRC, if she so chooses.

Findings

In my view, the OHRC has taken a reasonable position with respect to the audiotapes. It has indicated its agreement to return the audiotapes to the appellant as opposed to going to the expense of providing her with copies. In my view, there is nothing in the *Act* which would require the OHRC to provide copies, rather than the original audiotapes, to the appellant.

Based on my review of the representations of the OHRC, I am satisfied that it has made a reasonable effort to identify and locate records responsive to the appellant's request. The evidence tendered by the OHRC sufficiently demonstrates that it has adequately conducted searches for responsive records in those areas of its record-holdings where such records could reasonably be expected to exist. In the absence of any evidence from the appellant as to the

nature of any additional records she is seeking that were not identified by the OHRC, I find that the OHRC's searches were reasonable in the circumstances and I dismiss the appeal.

ORDER:

I dismiss the appeal.

Original signed by: _____
Donald Hale
Adjudicator

December 22, 2003 _____