



**Information and Privacy
Commissioner/Ontario**

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

INVESTIGATION REPORT

INVESTIGATION I93-084P

ONTARIO HUMAN RIGHTS COMMISSION



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ontario Human Rights Commission (the OHRC).

The OHRC was conducting an investigation into a complaint against a named library (the Library) filed by an employee of the Library. During the course of the OHRC investigation, the complainant, also an employee of the Library, was asked by the OHRC for her racial background. When she refused, she was advised by the OHRC that the information in question was already contained in its records.

The complainant was concerned that the OHRC's collection of personal information was contrary to the Freedom of Information and Protection of Privacy Act (the Act). She was also concerned that the OHRC had collected her personal information indirectly, contrary to section 39(1) of the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the OHRC's collection of the personal information in accordance with section 38(2) of the Act?
- (C) Was section 39(1) of the Act applicable?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

The information in question was about the racial backgrounds of the complainant and the other Library employees.

In our view, this information met the requirements in paragraph (a) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the OHRC's collection of the personal information in accordance with section 38(2) of the Act?

Section 38(2) of the Act sets out the conditions under which personal information may be collected on behalf of an institution. This section states:

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, **used for the purposes of law enforcement** or necessary to the proper administration of a lawfully authorized activity. (emphasis added)

The OHRC has stated that its collection of the racial background information involved all of the employees of the Library in the immediate work area of the employee who had filed the OHRC complaint, including the complainant. The OHRC advised us that the racial background information was collected from the Library employees to be used for the purposes of law enforcement. The OHRC has relied on previous Orders issued by this Office. In Order 200, then Assistant Commissioner Tom Wright stated:

Both Commissioner Sidney B. Linden and I have found that investigations into complaints made under the Human Rights Code, 1981, S.O. 1981 c. 53 (the "Code") are properly considered law enforcement matters and that these investigations may lead to proceedings before a Board of Inquiry under the Code, which are properly considered law enforcement proceedings. [See Order 89 (Appeal Number 890024), dated September 7, 1989 and Order 178 (Appeal Number 890112), dated June 12, 1990.]

The OHRC complaint involved an alleged contravention of section 5(1) of the Ontario Human Rights Code R.S.O. 1990. This section states, in part, that "Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour...". The OHRC advised us that the OHRC complaint against the Library specifically related to discrimination because of race and colour. As part of the investigation, the complainant, as well as the other employees of the Library in the immediate work area of the employee who filed the OHRC complaint, were asked for their racial backgrounds. In the complainant's case, she refused to provide her racial background to the OHRC.

However, the OHRC's collection of the other employees' racial background information was for the purpose of pursuing the investigation of the complaint under the Code. Since we have found that investigations into complaints made under the Code are considered law enforcement matters,

it is our view, therefore, that the OHRC's collection of this personal information was used for the purposes of law enforcement, in accordance with section 38(2) of the Act.

Conclusion: The OHRC's collection of personal information was in accordance with section 38(2) of the Act.

Issue C: Was section 39(1) of the Act applicable?

Section 39(1) of the Act provides that personal information shall only be collected by an institution directly from the individual to whom the information relates unless certain circumstances apply. (See Appendix A for full text).

The complainant was concerned that the OHRC had indirectly collected information about her racial background contrary to the provisions of section 39(1). She informed us that when she had refused to provide this information, the OHRC investigating officer had stated that the OHRC already had her racial background, and that he was attempting to confirm that this information was correct.

The OHRC advised that the investigating officer, who had been assigned the task of collecting the personal information, may have misunderstood the instructions given to him. Both the investigating officer and his supervisor assured our office that the OHRC had no information in its records regarding the complainant's racial background. According to the OHRC, the complainant had been falsely advised by the investigating officer that the OHRC already had her personal information. The OHRC informed us that it was sending a letter to the complainant, explaining the matter. The complainant was advised of this and was satisfied that the OHRC did not have information about her racial background in its records.

Since there was no indirect collection of the complainant's racial background, section 39(1) of the Act did not apply.

Conclusion: The OHRC did not indirectly collect information about the complainant's racial background, therefore, section 39(1) of the Act did not apply to this personal information.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The OHRC's collection of personal information was in accordance with section 38(2) of the Act.

- The OHRC did not indirectly collect information about the complainant's racial background, therefore, section 39(1) of the Act did not apply to this personal information.

Original signed by:
Susan Anthistle
Compliance Review Officer

February 16, 1994
Date

39.-(1) Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 42 or under section 32 of the Municipal Freedom of Information and Protection of Privacy Act, 1989;
- (c) the Commissioner has authorized the manner of collection under clause 59(c);
- (d) the information is in a report from a reporting agency in accordance with the Consumer Reporting Act;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute.