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

ORDER P-221

Appeal 890192

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/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

O R D E R

INTRODUCTION:

On May 16, 1989, the appellant submitted a request under the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act") to the Ministry of Citizenship seeking access to:

> Ontario Human Rights Commission, Complaint Case Files, 20-549F Etc./WCB, 348.*
>
> > Re: [Name of Appellant] 20-549F and Waterloo County Board of Education
> >
> > I made submissions on October 3, 1986 and on November 4, 1986 and a reply to the report on March 7, 1989 to the Ontario Human Rights Commission. From time to time in April and May 1989 I have telephoned the Ministry of Citizenship and the Ontario Human Rights Commission concerning the lack of action in this matter. I have objected to the undue delay and to the unproffessional [sic] report of C. Blackwood. I request to receive & examine all files connected with all of the above matters.
>
> * [The appellant later clarified WCB, 348 was meant to read MOC, 48]

The Ministry of Citizenship determined that the information requested was within the custody and control of the Ontario Human Rights Commission (the "institution"), forwarded the request to the Commission on May 25, 1989, and so advised the

appellant. The request was received at the Ontario Human Rights Commission on May 29, 1989.

On June 26, 1989, the requester appealed the institution's failure to respond to his request within the statutory 30 day time limit under subsection 29(4) of the Act, which provides as follows:

> A head who fails to give the notice required under section 26 or subsection 28(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

Subsection 50(1) of the Act gives a person who made a request for access to a record under subsection 24(1) or a request for access to personal information under subsection 48(1) a right to appeal any decision made by a head under this Act to the Information and Privacy Commissioner. Notice of the appeal was given to the institution and the appellant.

By letter dated June 27, 1989, the institution wrote to the appellant advising that access to some portion of the requested records was to be allowed. The letter stated:

> Access is denied to the following documents contained in your file:
>
> 1. Statistical reporting forms, which are reports prepared in the course of law enforcement. Access is denied pursuant to section 14(2)(a) of the Freedom of Information and Protection of Privacy Act (the "Act").

2. Officer's notes of October 3, 1986, ...

3. Officer's notes of October 7, 1986, ...

4. Officer's notes of February 10, 1987, ...

5. Officer's notes of February 13, 1987, which are a report prepared in the course of law enforcement. Access is denied pursuant to section 14(2)(a) of the Act.

6. Access is denied to the record of intake, which is a report prepared in the course of law enforcement. Access is denied pursuant to section 14(2)(a) of the Act.

7. Access is denied to Officer's notes dated April 23, 1987, May 11, 1987 and May 19, 1987, ...

8. Access is denied to a report from Mr. Blackwood to Mr. Burns dated January 20, 1989, which is a report prepared in the course of law enforcement. Access is denied pursuant to section 14(2)(a) of the Act.

9. Access is denied to the case disposition sheet since it is a report prepared in the course of law enforcement. Access is denied pursuant to section 14(2)(a) of the Act. Moreover, disclosure of the case disposition sheet would reveal advice or recommendations of a public servant and access is also denied pursuant to section 13(1) of the Act.

10. Finally, access is denied to a report by Mr. Blackwood to Mr. Burns and also a report by Mr.

> Burns to the Director of Compliance, since those document [sic] constitute reports prepared in the course of law enforcement. Access is denied pursuant to section 14(2)(a) of the Act.
>
> Moreover, disclosure of any of the records to which access has been denied could reasonably be expected to interfere with a law enforcement matter. Access is therefore further denied to all of the documents identified above pursuant to section 14(1)(a) of the Act.
>
> ...
>
> Please be advised that the above decisions have been made by the Acting Chief Commissioner of the Ontario Human Rights Commission. If you have any questions concerning this matter, please call me.

On July 4, 1989, the requester wrote to former Commissioner Sidney B. Linden indicating that he wished to continue his appeal of the head's deemed refusal and to appeal the severances applied to the records by the head. In addition, the appellant believed that there should be additional records which responded to his request.

On receipt of the appeal, the Appeals Officer assigned to the case obtained and reviewed the requested records.

As a mediated settlement was not possible, notice that an inquiry was being conducted to review the decision of the head was sent to the institution and the appellant.

In accordance with the usual practice, the notice of inquiry was accompanied by a report prepared by the Appeals Officer, which is intended to assist the parties in making their representations concerning the subject matter of the appeal.

The Appeals Officer's report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. The report also indicates that the parties, in making their representations, need not limit themselves to the questions set out in the report.

Representations were received from the institution on January 31, 1990. Upon reviewing the representations, further representations were requested and received from the institution. Representations were received from the appellant on January 23, 1990. I have considered all representations in making my Order. I have also considered the information contained in the appellant's letter of appeal as well as in his letters dated August 4, 1989, September 12, 1989 and October 17, 1989.

On January 5, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

PURPOSES OF THE ACT/BURDEN OF PROOF:

The purposes of the Act as set out in section 1 should be noted. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter_balancing privacy protection purpose of the Act. This provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions, and

should provide individuals with a right of access to their own personal information.

Further, section 53 of the Act provides that where the head of an institution refuses access to a record, the burden of proof that the record, or part thereof, falls within one of the specified exemptions in the Act lies with the head of the institution.

BACKGROUND:

The appellant filed a complaint under the Human Rights Code, 1981 (the "Code") with the institution regarding the affirmative action program of a local school board. This complaint was assigned file number 20-549F. The matter has not yet been determined by the institution.

The institution identified 45 records that were responsive to the appellant's request. Twenty-four of the 45 records were disclosed in their entirety to the appellant. The remaining 21 records are at issue in this appeal and may be described as follows:

1. Case closing statistical data, (pages 1-3)

2. OHRC Manager's handwritten report on a telephone conversation on 25/5/89, (pages 4-5)

3. Action memo dated 2/3/89 and 12/5/89 containing handwritten notes of OHRC Manager on a telephone conversation (page 6)

4. Officer's/Supervisor's response to parties submissions, (page 11)

5. Action memo containing OHRC Manager's notes on telephone conversation, (pages 16, 17)

6. Record of Conciliation/Disclosure sheet, (page 22)

7. Speedy memo from OHRC Manager to OHRC director, (page 23)

8. Case disposition sheet, (pages 24, 25)

9. Mailing addresses, (page 28)

10. Handwritten notes, (page 29)

11. Speedy memo by office to OHRC Manager, (page 30)

12. Record of Investigation sheet, (page 31)

13. 22/5/87 letter of the Waterloo County Board of Education to office with attachment, (page 35)

14. 19/5/87 Report of the Officer on telephone conversation, (page 55)

15. Report of the Officer on telephone calls, (page 56)

16. Officer report on 13/2/87 telephone conversation, (page 58)

17. Officer's report on 10/2/87 telephone conversation, (page 59)

18. Record of Intake, (page 61)

19. Unsigned complaint form, (page 62)
20. Report of Officer on telephone conversation, (page 96)

21. 3/10/86 report of Officer on telephone conversation, (page 98)

ISSUES/DISCUSSION:

A. Whether the appellant provided sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to accurately identify the record. If so, whether the institution completed a reasonable search for the record.

B. Whether the head's powers under the Act were properly delegated to the identified decision-maker.

C. Whether the institution's response was in compliance with section 26 of the Act.

D. Whether the institution's decision letter was in compliance with subsection 29(1) of the Act. If not, whether this would affect the validity of the decision.

E. Whether the information contained in the records qualifies as "personal information" as defined by subsection 2(1) of the Act.

F. Whether Records 1 - 8, 10 - 12 and 14 - 21 fall within the scope of the exemptions provided by subsections 14(1)(a) and 14(2)(a) of the Act.

G. Whether Records 8 and 19 fall within the scope of the exemption provided by subsection 13(1) of the Act.

H. If the answer to Issues F or G is in the affirmative, whether the records qualify for exemption under subsection 49(a) of the Act.

I. Whether Records 9 and 13 fall within the scope of the exemption provided by subsection 21(1) of the Act.

ISSUE A: Whether the appellant provided sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to accurately identify the record. If so, whether the institution completed a reasonable search for the record.

The appellant argues that the institution's response did not address all aspects of his request. He claims that although he gave as much detail as possible and sufficiently described the

records, the institution failed to provide him with what he was requesting.

Subsections 48(1) and (2) of the Act state:

> (1) An individual seeking access to personal information about the individual shall make a request therefor in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.
>
> (2) Subsections 10(2) and 24(2) and sections 25, 26, 27, 28 and 29 apply with necessary modifications to a request made under subsection (1).

Subsection 24(2) of the Act states:

> If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the
> request so as to comply with subsection (1).

In reviewing the appellant's request, I find that the interpretation which the institution made of the request, namely that it involved records within the appellant's complaint file No. 20_549F, was reasonable in the circumstances. Having been provided with both a name and a file number, I find that the institution acted reasonably in not seeking further clarification from the appellant. Further, I am informed that only after considerable written and oral communication with the appellant did it become clear to the Appeals Officer that the

appellant was also seeking records which referred to the telephone calls he had made to the
Ministry of Citizenship and the institution to inquire about the status of his complaint. This fact was communicated to the Freedom of Information and Privacy Coordinator for the institution. The Coordinator was most co-operative in searching for these additional records and he has provided me with an affidavit relating to the search he conducted. No additional records were found, and I am satisfied that a reasonable search was conducted.

ISSUE B: Whether the head's powers under the Act were properly delegated to the identified decision-maker.

The institution's decision letter identified the decision-maker as the "Acting Chief Commissioner". The appellant argues that as the Chief Commissioner of the Ontario Human Rights Commission had resigned and an Acting Chief Commissioner had been appointed in his place, all of the powers and duties that had been delegated to the Chief Commissioner:

> ... reverted to the Minister of Citizenship as Head of OHRC under the Regulations of the Act at the moment that [the Chief Commissioner]'s resignation as Chief Commissioner took effect. On June 27, 1989, when Mr. Griffin wrote to deny me access, he had no authority under the Act to do so, only the then Minister of Citizenship as Head could authorize such a letter and he didn't.

I am informed by the institution that in May of 1988 the Honourable Gerry Phillips, then Minister of Citizenship, delegated "all of [his] powers and duties for all matters

pertaining to the Ontario Human Rights Commission to the Chief Commissioner" (except for specific administrative functions) pursuant to subsection 62(1) of the Act which provides as follows:

> A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

Subsequent to this delegation, the Chairman of the Commission resigned. He was replaced on the same day by an individual who was appointed "Chairman of the Commission" for an initial four month term from June 7, 1989 to and including October 6, 1989. The decision respecting access in this case was made June 27, 1989. On that date, Mr. Phillips continued to serve as Minister of Citizenship.

I have examined both the Minister's Delegation of Authority and the Order-in-Council appointing the decision-maker as Chairman of the Commission.

The wording of the delegation indicates that the delegation was made to the head of the Commission ("the Chief Commissioner") and not to the particular individual who would be filling that position. There is no name mentioned in the delegation and words such as "to the current Chief Commissioner" are not used.

The Order-in-Council dealing with the change of leadership of the Commission indicates that the replacement will be "designated as Chairman". There is no language in the Order-in-Council to suggest that the appointment was an acting

appointment or somehow an appointment with less authority or scope than a full Chairmanship.

The section of the Human Rights Code, 1981 that creates the position of Chairman of the Commission contains no reference to any time period in which the Chairman would sit. It merely states that the Lieutenant Governor-in-Council shall designate a member of the Commission as Chairman.

Further indication of the nature of the powers and duties available to the replacement Chairman is provided by subsections 27(f) and (m) of the Interpretation Act, R.S.O. 1980, c.219 which state as follows:

> In every Act unless the contrary intention appears,
>
> (f) where a power is conferred or a duty is imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the holder of the office for the time being;
>
> (m) words directing or empowering a public officer or a functionary to do an act or thing, or otherwise applying to him by his name of office, include his successors in office and his lawful deputy;

In my view, these subsections provide the newly-appointed head of the Commission with both a power and a duty to exercise the same powers and duties as the holder of the office for the time being under subsection (f) and as the successor in the office to the previous Chairman under subsection (m).

The appellant submits that the replacement Chairman had not been lawfully delegated the responsibilities of the Minister under the Act as the appointment of the replacement Chairman was to be interpreted as being a temporary or acting one. In this case, although the institution referred to the decision-maker as the "Acting Chief Commissioner" in its decision letter, there is no evidence in the delegation other than the duration of the appointment to suggest that the new appointee had been designated anything other than the full "Chairman" of the Commission.

I note that the Order-in-Council appointing the new head of the Commission used the term "Chairman" not the expression "Chief Commissioner" used by the Minister in the delegation under subsection 62(1) of the Act. Subsection 26(3) of the Ontario Human Rights Code, 1981 states that the Lieutenant Governor-in-Council shall designate a member of the Commission as Chairman and a member as Vice-Chairman. There is no mention of the term Chief Commissioner in the legislation. Nevertheless, the "Chairman" as the title is referred to in the legislation, is popularly known both inside and outside the Ontario Human Rights Commission as the Chief Commissioner.

In the text, Administrative Law (Second Ed.) at p.3-91, David J. Mullan discusses technical defects in the appointment of decision-makers. The author states that serious defects are only grounds for review if they are mandatory within the statutory scheme or if the defect can be shown to result in substantial prejudice. In my view, by implication, a less serious defect which does not result in any prejudice would not be grounds for invalidating a delegation.

I do not believe that the Minister's use of the popular term for the position of Chairman of the Ontario Human Rights Commission, namely "Chief Commissioner", in his Delegation of Authority is serious enough to render the delegation ineffective. Accordingly, I find that the head's powers were properly delegated to the decision-maker, the Chief Commissioner (Chairman) of the Ontario Human Rights Commission.

ISSUE C: Whether the institution's response was in compliance with section 26 of the Act.

The appellant's original request was made to the Ministry of Citizenship and was dated May 16, 1989. The Ministry of Citizenship determined that the information requested was within the custody or control of the Ontario Human Rights Commission and forwarded the request to the Commission on May 25, 1989, one day after it was received. The Ontario Human Rights Commission received the request on May 29, 1989.

Subsection 25(4) of the Act states:

> Where a request is forwarded or transferred under subsection (1) or (2), the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it.

Section 26 states:

> Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections

> 27 and 28, within thirty days after the request is received,
>
> (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given and
>
> (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.

As the original request was received by the Ministry of Citizenship on May 24, 1989, in accordance with subsection 25(4) of the Act, the institution is deemed to have received the request on May 24, 1989, the same day it was received by the Ministry of Citizenship. The institution's decision letter is dated June 27, 1989, 34 days after receipt of the request.

In its representations, the institution admits "... that technically our letter decision of June 27, 1989 missed the deadline ...". The institution goes on to state that the "delay was occasioned by some difficulty in obtaining the record and completing all consultations required to make a decision." It explained that, given the brevity of the extension required to respond to the request, a notice of time extension would not have had any practical value. The institution submits that while the delay was a procedural error, it was neither excessive nor unreasonable, and did not prejudice the appellant in any way. In my view, the institution's response was not in compliance with section 26 of the Act. However, given that the appellant has received severed copies of the records at issue, there is no remedial order for me to make in the circumstances.

ISSUE D: Whether the institution's decision letter was in compliance with subsection 29(1) of the Act. If not, whether this would affect the validity of the decision.

In his representations, the appellant states that the institution's failure to include the name of the person responsible for the decision violated subsection 29(1) of the Act and that this violation was of "such a magnitude and of such a nature" that the head's decision is null and void. The appellant states that therefore, his request for access must be granted.

Subsection 29(1) of the Act states:

> Notice of refusal to give access to a record or a part thereof under section 26 shall set out,
>
> (a) where there is no such record,
>
> (i) that there is no such record, and
> (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
>
> (b) where there is such a record,
>
> (i) the specific provision of this Act under which access is refused,
>
> (ii) the reason the provision applies to the record,

(iii) the name and position of the person responsible for making the decision, and

(iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

In its representations, the institution states:

> "[the] Requester ... takes issue with the fact the letter-decision merely identifies a position - "Acting Chief Commissioner" but does not state the name of the person responsible for making the decision.
>
> ...The fact is that since the institution has only one position of Chief Commissioner, ... omitting the name of the person would not have been such a grievous error nor would it have prejudiced the requester."

I agree with the representations of the institution. In my view, there was only one person in the institution who held the position of Chief Commissioner and, therefore, the appellant was not prejudiced by the fact that the institution omitted the actual name of this person.

Generally, the institution's letter describes the record, states whether access is allowed or denied and indicates the sections of the Act under which access is denied. A paragraph explains the institution's reasons for claiming these exemptions.

After careful review of the decision letter, I find that the institution, in the circumstances of this particular case, has not complied with subsection 29(1)(b)(iii) of the Act. This

subsection requires that the institution include both the name and the position of the person responsible for the decision to properly fulfil its duties under the Act. However, I disagree with the appellant's contention that a defect of this type would result in full access being granted to the appellant. As the appellant is aware of the name of the person responsible for making the decision, I see no purpose that would be served by ordering the institution to issue a new decision.

ISSUE E: Whether the information contained in the records qualifies as "personal information" as defined by subsection 2(1) of the Act.

In all cases where the request involves access to personal information it is my responsibility, before deciding whether the exemptions claimed by the institution apply, to ensure that the information in question falls within the definition of "personal information" in subsection 2(1) of the Act, and to determine whether this information relates to the appellant, another individual or both. The definition of "personal information" reads as follows:

> "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,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In my view, the information contained in the records at issue in this appeal falls within the definition of "personal information". I find that the information contained in the records is properly considered personal information about the appellant with the exception of the information severed from Records 9 and 13, which is personal information about another identifiable individual.

Subsection 47(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 49 provides a number of exceptions to this general right of access to personal information by the person to whom it relates. One such exception is contained in subsection 49(a) of the Act which reads as follows:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (a) where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information; [emphasis added]

I will now consider whether the exemptions claimed by the institution have been properly applied to exempt the records from disclosure.

ISSUE F: Whether Records 1 - 8, 10 - 12 and 14 - 21 fall within the scope of the exemptions provided by subsections 14(1)(a) and 14(2)(a) of the Act.

The institution has relied on subsections 14(1)(a) and 14(2)(a) to exempt 19 of the records at issue from disclosure. Subsections 14(1)(a) and 14(2)(a) of the Act provide as follows:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

> (a) interfere with a law enforcement matter;
>
> (2) A head may refuse to disclose a record,
>
> (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

The words "law enforcement" are defined in subsection 2(1) of the Act as follows:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
>
> (c) the conduct of proceedings referred to in clause (b);

Both Commissioner Linden and I have found that investigations into complaints made under the Ontario Human Rights Code, 1981 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].

I have considered the records in issue in the present appeal, and it is clear that some of them form part of the institution's investigation file of a complaint under the Code which may lead to

proceedings before a Board of Inquiry. In my view, the investigation of this complaint qualifies as a "law enforcement matter" within the meaning of subsection 14(1)(a) of the Act. Having found that the institution's investigation is a "law enforcement matter", I must now decide whether disclosure of the records at issue in this appeal could reasonably be expected to interfere with this investigation.

In Order 188 (Appeal 890265, dated July 19, 1990), I stated at page 10:

> Section 14 of the Act provides that an institution may refuse to disclose a record where doing so could reasonably be expected to result in specified types of harms.
>
> ...
>
> It is my view that section 14 ... requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason. An institution relying on the section 14 exemption, bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm(s) by virtue of section 53 of the Act.

The institution, in its representations, submitted that a record covered by the exemption under subsection 14(2)(a) is automatically covered by subsection 14(1)(a). The institution has also informed me that the investigation is ongoing. In my

opinion, this is not sufficient to establish that disclosure of any part of a record could reasonably be expected to interfere with a law enforcement matter. Accordingly, in my view, the institution has not established that subsection 14(1)(a) applies to the records at issue in this appeal.

I will now determine whether or not the records in question qualify for exemption under subsection 14(2)(a) of the Act.

At page 9 of Order 200 (Appeal No. 890058), dated October 11, 1990, I established a three part test which the institution must meet in order to successfully exempt a record under subsection 14(2)(a) of the Act. The criteria and my comments were as follows:

1. the record must be a report; and

2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

The word "report" is not defined in the Act. However, it is my view that in order to satisfy the first part of the test i.e. to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

Records 4, 6, 8, 12 and 18 are accounts of the results of various aspects of the institution's investigation of the

appellant's complaint. Therefore, I find that the first part of the subsection 14(2)(a) test has been satisfied with respect to these records.

With respect to the second part of the subsection 14(2)(a) test, I am satisfied that the records that qualify as reports were prepared in the course of law enforcement or investigations.

In my view, the third part of the test has also been satisfied for those records that qualify as reports. The institution is an agency which is established under subsection 26(1) of the Code. Subsection 26(2) of the Code stipulates that the institution is responsible to the Minister for the administration of the Code.
Finally, section 28 of the Code clearly establishes that the functions of the institution include enforcing and regulating compliance with a law. Section 28 of the Code reads, in part, as follows:

> (b) to promote an understanding and acceptance of and compliance with this Act;
>
> ...
>
> (i) to enforce this Act and orders of boards of inquiry; and
>
> ...

In my opinion, the following records do not qualify as reports for the purposes of the first part of the subsection 14(2)(a) test and therefore, as all three parts of the test must be satisfied, they do not qualify for exemption from disclosure under subsection 14(2)(a) of the Act: 1, 2, 3, 5, 7, 10, 11, 14,

15, 16, 17, 19, 20 and 21. These records consist of internal memoranda, minutes and notes.

In summary, I find that only Records 4 (page 11), 6 (page 22), 8 (pages 24-25), 12 (page 31), and 18 (page 61) qualify for exemption under subsection 14(2)(a) of the Act.

Commissioner Linden considered subsection 14(2)(a) of the Act in Order 38 (Appeal No. 880106), dated February 9, 1989. At page 4 of that Order he stated:

> Subsection 14(2)(a) is unusual in the context of the Freedom of Information and Protection of Privacy Act, 1987, in that it exempts a type of document, a report. The exemption does not require that the report meet additional criteria such as a reasonable expectation of some harm resulting from the disclosure of the report, or specifications about the contents thereof.
>
> Under subsection 14(2)(a) the head may exercise his or her discretion to deny access to an entire report.

I concur with Commissioner Linden's view of subsection 14(2)(a), and adopt it for the purposes of this appeal. In my view, Records 4, 6, 8, 12, and 18 in their entirety qualify for exemption under subsection 14(2)(a).

ISSUE G: Whether Records 8 and 19 fall within the scope of the exemption provided by subsection 13(1) of the Act.

Subsection 13(1) of the Act states:

> 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.

As Record 8 (pages 24 and 25) has been found to qualify for exemption under subsection 14(2)(a) I need not deal with the applicability of subsection 13(1) to this record.

Record 19 (page 62) is a standard complaint form used by the institution. This form contains spaces for the names of the complainant and the respondent, the date of the alleged violation of the Code, Code provision numbers, the grounds for contravention of the Code and the particulars of the violation. At the bottom of the form there is a place for the complainant's signature.

From my review of this form, it appears that the portions of it which are filled in contain information which was provided to the institution by the appellant. In fact, the information written in the "Particulars" section is a direct quote from the bottom of page 2 of the intake questionnaire completed by the appellant. I note that the intake questionnaire was released to the appellant in its entirety.

The institution has made no representations to me regarding Record 19 (page 62) except to state that it is "the draft of the complaint...".

In my view, the institution has not met the onus which falls upon it under section 53 and I therefore order Record 19 (page 62) to be disclosed to the appellant.

ISSUE H: If the answer to Issues F and G is in the affirmative, whether the records qualify for exemption under subsection 49(a) of the Act.

Under Issue E, I found that the contents of the requested records qualify as "personal information" about the appellant. In Issue F, I found that Records 4 (page 11), 6 (page 22), 8 (pages 24, 25), 12 (page 31) and 18 (page 61) qualify for exemption under subsection 14(2)(a) of the Act. Therefore, the exemption provided by subsection 49(a) applies and consequently the head has the discretion to refuse disclosure of these records. Subsection 49(a) of the Act provides that:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (a) where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;

In the circumstances of this appeal, subsection 49(a) of the Act provides the head with a discretion to refuse to disclose to the appellant his own personal information where section 14 would apply. In any case in which the head has exercised his/her discretion under subsection 49(a), I look very carefully at the manner in which the head has exercised this discretion. Provided
that this discretion has been exercised in accordance with established legal principles, in my view, it should not be disturbed on appeal.

In this case, I am satisfied that the head has properly exercised his discretion under subsection 49 (a) of the Act.

ISSUE I: Whether Records 9 and 13 fall within the scope of the exemption provided by subsection 21(1) of the Act.

Under Issue E, I found that Records 9 and 13 contain personal information about another individual. Once it has been determined that a record or part of a record contains personal information, subsection 21(1) of the Act prohibits the disclosure of this personal information to any person other than the individual to whom it relates, except in certain circumstances. One such circumstance is contained in subsection 21(f) of the Act which reads as follows:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Guidance is provided in subsections 21(2) and (3) of the Act with respect to the determination of whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

In its representations the institution argues that it deleted the name and title of the other individual mentioned in two of the requested records as there had been no consent by the person to disclosure and no circumstances or combination thereof were in existence to justify disclosure. In the circumstances I

accept the argument put forward by the institution and uphold the head's decision not to release the name and position of the individual identified in Records 9 and 13.

ORDER:

1. I order the head to disclose to the appellant Records 1, 2, 3, 5, 7, 10, 11, 14, 15, 16, 17, 19, 20 and 21 in their entirety within twenty (20) days of the date of this Order. I further order the head to advise me in writing within five (5) days of the date of disclosure, of the date on which disclosure was made.

2. I uphold the head's decision not to disclose Records 4, 6, 8, 9, 12, 13 and 18.

3. The notice concerning disclosure should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original signed by: February 4, 1991
Tom A. Wright Date
Assistant Commissioner