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

ORDER P-253

Appeals 900017 and 900032

Ontario Human Rights Commission

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O R D E R

On July 8, 1991, the undersigned was appointed Assistant Commissioner and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

This Order disposes of all issues involved in Appeal Numbers 900017 and 900032. I am issuing one order due to the particular relationship of the two appellants and the records at issue in the appeals.

Appellant #1 (Appeal 900032) filed a complaint with the Ontario Human Rights Commission (the "institution") stating that he had been discriminated against by his employer. The same appellant subsequently filed a second complaint with the institution stating that he had suffered reprisals at the hands of his employer because of the filing of his original complaint.

Appellant #2 (Appeal 900017) provided a witness statement to the institution regarding the original complaint filed by Appellant #1. Appellant #2 subsequently filed a complaint with the institution because he believed he had suffered reprisal for providing a witness statement to the institution.

In both cases, the institution decided not to request that the Minister appoint a Board of Inquiry to hear these complaints. Both appellants were not satisfied with this decision, and requested that the matter be reconsidered by the institution. Reconsideration reports were completed on behalf of both appellants, and in each case the institution reaffirmed its decision not to request the appointment of a Board of Inquiry.

As a consequence of the institution's decision not to appoint a Board of Inquiry, each appellant submitted a request for a copy of:

1) the report and case analysis of the reinvestigation of his case (the "reconsideration report");

2) the recommendations by the institution's Legal Department regarding his case (the "recommendation"); and,

3) the minutes of the meeting at which the Commission reaffirmed its decision not to request a Board of Inquiry in each case (the "minutes").

Appellant #1 requested the information on November 20, 1989, and Appellant #2 on November 3, 1989.

The institution denied access to the records which responded to both appellants' requests, citing sections 13(1), 19, 14(2)(a), 21(1) and 49(a) in its decision letter to Appellant #1, and sections 13(1), 19, 14(2)(a) and 21 in its decision letter to Appellant #2.

Both appellants filed appeals under the Act, each claiming that they wanted access to the requested documents in order to determine if the institution had considered what they believed to be important facts in reaching its decision not to appoint a Board of Inquiry. Subsequent to filing their appeals, both appellants retained the same counsel.

After the appeals were filed, each appellant was provided with access to the minutes regarding his individual case.

The records which remain at issue in these appeals are the two reconsideration reports and the recommendation from the legal department which addressed both appellants' complaints.

During the inquiry phase of these appeals, the institution and counsel for both appellants were asked to provide representations as to the proper treatment of the records. I received representations from these parties, and have considered them in reaching my decision.

In all cases where a request involves access to personal information, it is my responsibility, before deciding whether exemptions claimed by the institution apply, to ensure that the information in question falls within the definition of "personal information" found in section 2(1) of the Act. I must also determine whether the information relates to the appellant, another individual, or both.

I have examined the records at issue in these appeals and, in my view, the information contained in these records falls within the definition of personal information. I find that the information is properly considered personal information about the appellants and other identifiable individuals.

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 exemptions to this general right of access by the person to whom it relates. One such exemption 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 any of the exemptions claimed by the institution have been properly applied to exempt the records from disclosure.

I shall first consider the application of section 14(2)(a), which states:

> 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;

I must first determine if the records at issue qualify as reports. The word "report" was defined by Commissioner Wright in Order 200 as a "formal statement or account of the results of the collation and consideration of information". The records in these appeals are accounts of the results of various aspects of the institution's reconsideration of the appellants' complaints and, in my view, both documents are properly characterized as "reports".

Both former Commissioner Sidney B. Linden and Commissioner Wright have found in previous orders that investigations into complaints made under the Ontario Human Rights Code, 1981 (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 Orders 89, 178, 200, 221).

Accordingly, I find that both the Reconsideration Reports and the memorandum meet the requirements for exemption under section 14(2)(a) of the Act.

Because these records contain information which qualifies as "personal information" about the appellants, and because I have determined that they qualify for exemption under section 14(2)(a) of the Act, I find that the exemption provided by section 49(a) applies, thereby providing the head with discretion to refuse disclosure of these records to the appellants.

In any case in which a head has exercised his/her discretion under 49(a), I must satisfy myself that this discretion has been exercised in accordance with established legal principles. In this case, I am satisfied that the head has properly exercised his discretion under section 49(a) of the Act.

Accordingly, I uphold the head's decision not to disclose the records at issue.

Original signed by: November 19, 1991
Tom Mitchinson Date
Assistant Commissioner