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

ORDER P-258

Appeal 900375

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").

BACKGROUND:

The appellant filed a complaint with the Ontario Human Rights Commission (the "institution") stating that she had been subjected to harassment and differential treatment by her employer.

The institution decided not to request that the Minister appoint a Board of Inquiry to hear the complaint. The appellant was not satisfied with this decision, and requested that the matter be reconsidered by the institution.

On July 5, 1990, the appellant specifically requested access to information or documents contained in her case history file, and in particular, the "Case Disposition sheet".

In addition, the appellant requested an extension of time for her submissions regarding reconsideration until her access request under the Act had been resolved.

The institution contacted the appellant to clarify her request. As a result, the request was narrowed to include only information relied upon by the institution in arriving at its

decision not to recommend a Board of Inquiry to hear her complaint. The appellant indicated that her request was to include documents such as:

1) the Case Disposition sheet;

2) the legal opinion containing the recommendations of the institution's Legal Department regarding the case (the "legal opinion"); and,

3) the respondent's submission to the Case Summary.

On July 24, 1990, the institution advised the appellant that access was granted to the "respondent's submission to the Case Summary". She had also previously been provided with a copy of the "Case Summary" which contained the findings of the investigation. Access was denied to the Case Disposition sheet pursuant to sections 13(1), 14(1)(a) and (b) of the Act, and the legal opinion pursuant to sections 14(1)(a) and (b) and 19 of the Act.

The appellant filed an appeal under the Act on August 21, 1990, claiming that she required access to the Case Disposition sheet and the legal opinion in order to properly exercise her statutory right to make submissions leading to a reconsideration of her Human Rights complaint.

During the course of mediation, the appellant advised the Appeals Officer that, while the Case Disposition sheet and the legal opinion were responsive to her request, she was also seeking access to any other records which contained information

which was contrary to the recommendation that her complaint proceed to a Board of Inquiry. In conversations with the institution, the Appeals Officer confirmed that the Case Disposition Sheet and the legal opinion are the only records which are responsive to the appellant's request. Therefore, it is these two records which are at issue in this appeal.

The Appeals Officer obtained and reviewed a copy of the records. An index which accompanied the records indicated that the institution was now relying on section 14(2)(a) of the Act as an additional ground for denying access to the records.

Because attempts to mediate this appeal were not successful, the matter proceeded to an Inquiry. During the Inquiry, the institution and the appellant were provided with an opportunity to submit representations as to the proper treatment of the records. Representations were received from these parties, and I have considered them in reaching my decision.

ISSUES:

The issues arising in this appeal are as follows:

A. Whether the information contained in the requested records qualifies as "personal information", as defined by section 2(1) of the Act.

B. Whether the records qualify for exemption under any of sections 13(1), 14(1)(a) or (b), 14(2)(a) or 19 of the Act.

C. Whether the head has properly applied the discretionary exemption under section 49(a) of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the requested records qualifies as "personal information", as defined by section 2(1) of the Act.

The introductory wording of the definition of "personal information" found in section 2(1) reads:

> "personal information" means recorded information about an identifiable individual, ...

I have examined the records at issue in this appeal 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 recorded information about the appellant and other identifiable individuals.

Section 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. One such exemption is contained in section 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,
>
> > 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 head have been properly applied to exempt the records from disclosure.

ISSUE B: Whether the records qualify for exemption under any of sections 13(1), 14(1)(a) or (b), 14(2)(a) or 19 of the Act.

I shall first consider the application of sections 14(1)(a) and (b), which state:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;
>
> (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

I have reviewed the records at issue in this appeal, and it is clear that they were generated in the course of the institution's investigation of a complaint under the Ontario Human Rights Code, 1981 (the "Code"), which may lead to proceedings before a Board of Inquiry.

Former Commissioner Sidney B. Linden, Commissioner Tom A. Wright and I have all found in previous orders that investigations conducted by the institution into complaints made under the Code are properly considered law enforcement matters. We have also found that because these investigations may lead to proceedings

before a Board of Inquiry under the Code, they are properly characterized as law enforcement proceedings (see Orders 89, 178, 200, P-221 and P-253).

Where the institution decides not to appoint a Board of Inquiry with respect a complaint, section 36(1) of the Code provides that the complainant may request the institution to reconsider this decision. The appellant, in this appeal, has applied for reconsideration of her complaint. It is my view that until either

a Board of Inquiry has been appointed or the reconsideration process has been completed, it is not possible to conclude that the institution's investigation has been completed.

The matter of interference with an investigation under the Code was also addressed by Commissioner Linden in Order 89. I concur with his view that the ability of the Ontario Human Rights Commission to conduct an investigation without interference is vital to the Commission's effectiveness in carrying out its responsibilities and mandate under the Code.

The reconsideration process necessarily includes making use of the records at issue in this appeal. It is my view that disclosure of the Case Disposition sheet and the legal opinion could reasonably be expected to interfere with the institution's investigation of the complaint. In so finding, I recognize that the appellant feels that she needs access to the records in order to make effective submissions to the institution regarding her request for reconsideration. However, I feel that the institution has taken steps to address the appellant's legitimate concerns. In order to provide complainants with

sufficient information to prepare cases for reconsideration, the institution's practice is to provide each complainant with a copy of the respondent's reply to the complaint and allow the complainant to comment on it. In addition, the complainant receives a detailed summary of findings and is invited to make written submissions on the issues and the evidence. The appellant has been provided with both of these documents and, in my view, they are sufficient to enable the appellant to make effective submissions to the institution regarding her request for reconsideration.

Accordingly, I am satisfied that both the Case Disposition sheet and the legal opinion meet the requirements for exemption under sections 14(1)(a) and (b) of the Act.

Because I have found that the records qualify for exemption under sections 14(1)(a) and (b), it is not necessary for me to consider the other exemptions claimed by the institution.

ISSUE C: Whether the head has properly applied the discretionary exemption under section 49(a) of the Act.

Because the records at issue contain information which qualifies as "personal information" about the appellant, and because I have determined that they qualify for exemption under sections 14(1)(a) and (b) 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 appellant.

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 her discretion under section 49(a) of the Act.

ORDER:

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

Original signed by: December 5, 1991
Tom Mitchinson Date
Assistant Commissioner