



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

ORDER 165

Appeals 890223 and 890240

Ontario Women's Directorate



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O R D E R

These appeals were received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has 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 of a head under the Act to the Commissioner.

The facts of these cases and procedures employed in making this Order are as follows:

1. On June 2, 1989, the appellants in Appeal Number 890240 ("appellant A" and "appellant B") wrote to the Ontario Women's Directorate (the "OWD") to request access to the following information:

We, the undersigned, formally request copies of all information and documentation resulting from the investigation conducted by Ministry of Government Services, Human Resources Branch in relation to our charges of sexual harassment at the Ontario Women's Directorate.

2. On June 9, 1989, the appellant in Appeal Number 890223 ("appellant C") made the following request:

Please provide me with a complete photocopy of the official complaint filed against [name of appellant C] and a final report of the result of the investigation.

3. On June 30, 1989, the Assistant Deputy Minister of the OWD wrote to each of appellants A, B and C and advised that

partial access would be granted in response to their respective requests. The appellants were each given access to summaries of their own comments made to the investigators and to certain parts of the introduction to the investigation report. In addition, each appellant was given access to those recommendations contained in the report which directly related to himself or herself.

In respect of those parts of the records to which access was denied, the OWD's letters were identical and read as follows:

I am denying you access to the comments of the witnesses and findings as well as parts of the introduction and recommendations that do not pertain to you pursuant to subsections 10(2), 13(1), 21(3) (b), and 49(b) of the Act. These provisions apply because the records contain personal information about other individuals which if released may constitute an unjustified invasion of their personal privacy.

4. On August 2, 1989, appellant C wrote to me appealing the decision of the head and I gave notice of the appeal (Appeal Number 890223) to the OWD on August 3, 1989.
5. On August 4, 1989, appellants A and B wrote to me appealing the decision of the head and I gave notice of the appeal (Appeal Number 890240) to the OWD on August 18, 1989.
6. Upon receipt of these appeals, the Appeals Officer obtained and reviewed a copy of the records at issue. The records consist of a transmittal memorandum to the Assistant Deputy Minister of the OWD from the authors of an attached investigation report. The investigation report consists of

an introduction, summaries of comments of persons interviewed during the course of the investigation and the findings and recommendations of the investigators.

7. The Appeals Officer wrote to each of the individuals who were interviewed by the investigators, and whose comments were severed from the record on the basis that the disclosure of the information would unjustifiably invade their personal privacy. These individuals included appellants A, B and C. The purpose of writing to these individuals was to advise them of the appeals and to let them know that their interests might be affected. In

addition, the Appeals Officer asked these individuals if they would be willing to consent to the disclosure of the information which the head believed to be their personal information to the appellants.

8. All three appellants have consented to the disclosure of their own personal information to each of the other appellants. Of the eight other individuals affected by these appeals, (the "affected persons"), three have provided my office with their unconditional consent to disclose their personal information while two have provided their conditional consent. Three of the affected persons did not respond at all. Despite obtaining consent from the three appellants and certain of the affected persons, the head of the OWD determined that no other individual's personal information would be released to someone other than the individual to whom the information related.

9. During the course of several telephone conversations and a meeting with the Freedom of Information and Privacy Co_ordinator (the "Co_ordinator"), the Appeals Officer discussed the nature and application of the exemptions cited by the OWD to deny access. As the Co_ordinator indicated that the OWD would maintain its position with respect to these exemptions, the Appeals Officer formed the opinion that no settlement of issues arising in this appeal was likely.

10. By letters dated November 1, 1989, I notified the OWD, the appellants and the affected persons that I was conducting an inquiry to review the decisions of the head. In accordance with my usual practice, the Notice of Inquiry was accompanied by a report prepared by the Appeals Officer respecting each of the appeals. These reports are intended to assist the parties in making their representations concerning the subject matter of the appeal. An Appeals Officer's Report outlines the facts of an appeal and sets out questions which paraphrase those sections of the Act which appeared to the Appeals Officer, or any of the parties, to be relevant to the appeal. The sections of the Act paraphrased in the report include those exemption sections cited by the head when refusing access to a record or a part thereof. The report indicates that the parties, in making their representations to the Commissioner, need not limit themselves to the questions set out in the report.

11. Representations have been received from the OWD and appellant C and I have considered them in making this Order.
12. In its representations, the OWD indicated that it is now prepared to release to the appellants a copy of the memorandum of transmittal. Accordingly, the only record at issue in this appeal is the investigation report.
13. In its representations, the OWD also raised a new exemption in support of the head's decision to refuse access; namely section 19. According to the OWD, section 19 applied to exempt from disclosure all parts of the record not previously disclosed. The OWD also indicated that subsection 13(1) of the Act applied to exempt from disclosure the findings contained in the report. Previously, section 13 had been cited in respect of the recommendations only.

For the purpose of convenience, I have divided the record (being the investigation report) into the following sections:

- Interview summaries (exempted pursuant to subsection 49(b) and section 19).

(pages 2 _ 21)
- Findings (exempted pursuant to subsections 49(b) and 21(3) (b), 13(1) and section 19).

(pages 22 and 23)
- Recommendations (exempted pursuant to subsection 13(1) and section 19).

(pages 24 and 25)

The issues arising in these appeals are as follows:

- A. Whether the information contained in the record qualifies as "personal information" as defined by subsection 2(1) of the Act.
- B. Whether all or any part of the requested record would qualify for exemption under section 19 of the Act.
- C. Whether all or any part of the requested record would qualify for exemption under section 13 of the Act.
- D. If the answer to either Issue B or C is in the affirmative, whether the exemption provided by subsection 49(a) of the Act applies in the circumstances of these appeals.
- E. Whether the head properly applied the discretionary exemption provided by subsection 49(b) of the Act in severing information from the requested record.

The purposes of the Act as set out in section 1 should be noted at the outset. Subsection 1(a) provides the 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 should be limited and specific. Subsection 1(b) sets out the counter_balancing privacy protection purpose of the Act. This subsection provides that the Act should protect the privacy of individuals with respect to 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 the burden of proof that a record, or a part thereof, falls within one of the specified exemptions in the Act lies with the head of the institution.

Before proceeding to consider the issues noted above, I believe that it would be useful to provide some background information to these appeals. Each of the requests which generated these appeals was directed to the Freedom of Information and Privacy Co_ordinator for the Ministry of Government Services. Apparently, the Ministry of Government Services performs certain human resources functions on behalf of the OWD. In this case, the requested records were maintained by officials with the Ministry of Government Services. Nevertheless, the records were considered to be within the control of the OWD.

On March 30, 1989, a written complaint was filed with the OWD by three of its employees, including appellants A and B. The complaint involved allegations of sexual and personal harassment on the part of another employee of the OWD, appellant C. Upon receipt of the complaint, the Director of Corporate Services wrote to the Director of the Human Resources Services Branch at the Ministry of Government Services to request an investigation. Two employees of the Ministry of Government Services, a Staff Relations Officer and a Senior Human Resources Consultant, were assigned to conduct an investigation.

In the course of the investigation, each of the appellants and a number of other employees of the OWD were interviewed. The ensuing investigation report, being the record at issue in these appeals, identifies the individuals who were interviewed and summarizes the comments ascribed to them by the investigators. The investigation report was transmitted to the Assistant Deputy Minister of the OWD under the cover of the memorandum of transmittal which the OWD is now prepared to release to the appellants and is therefore not at issue in these appeals.

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

In Order 37 (Appeal Number 880074), dated January 16, 1989, I stated that in all cases where the request involves access to personal information it is my responsibility, before deciding whether the exemption claimed by the institution applies, 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.

Subsection 2(1) of the Act states:

"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 record at issue in these appeals falls within the definition of personal information under subsection 2(1). I find that the information contained in the record is properly considered personal information about each of the appellants or about the appellants and another individual or individuals.

Subsection 47(1) of the Act gives individuals a general right of access to:

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

However, this right of access under subsection 47(1) is not absolute. Section 49 provides a number of exceptions to this general right of disclosure of personal information to the person to whom it relates.

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; (emphasis added)

In these appeals the OWD has claimed that sections 13 and 19 of the Act apply to exempt the record from disclosure and I will consider the application of these exemptions.

ISSUE B: Whether all or any part of the requested record would qualify for exemption under section 19 of the Act.

Section 19 of the Act reads as follows:

A head may refuse to disclose a record that is subject to solicitor_client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

This section provides an institution with a discretionary exemption covering two possible situations:

- (1) A head may refuse to disclose a record that is subject to the common law solicitor_client privilege; or
- (2) a head may refuse disclosure if a record was prepared by or for Crown Counsel for use in giving legal advice or in contemplation of or for use in litigation.

A record can be exempt under the second part of section 19 regardless of whether the common law criteria relating to the first part of the exemption are satisfied.

In its submissions, the OWD indicated that it was not relying on the common law solicitor_client privilege which is the first part of the section 19 exemption. Rather, the OWD submitted that the record at issue in this appeal falls within the second part of the section 19 exemption.

In its submissions, the OWD indicated the following:

It is submitted, that at the time of the request, the Head did and it is reasonable to find, that she contemplated that the complaint would result in litigation (i.e. a grievance pursuant to Section 27.10 of the collective agreement between the Management Board of Cabinet and OPSEU and/or a complaint under the Ontario Human Rights Code.) Moreover, because of the nature of the allegations and the form in which they were presented, as well as the particular Ministry involved, it is reasonable to accept the proposition that the Head would be aware that litigation was imminent.

To fall within the scope of the second part of the section 19 exemption, the OWD must demonstrate that:

1. the record was prepared by or for Crown counsel;
and
2. that the record was prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

The OWD has not provided any evidence that the record was prepared by or for Crown counsel and has therefore failed to meet the first part of the test for exemption under the second part of the section 19 exemption.

The OWD submissions focus on the second part of the test, that being the purpose for which the record was prepared. As to

whether or not the record was prepared in "contemplation of litigation", in Order 52 (Appeal 880099), dated April 12, 1989, I set out the following two_fold test for according a record privileged status on the basis of having been prepared in contemplation of litigation. They are:

- (a) the dominant purpose for the preparation of the document must be in contemplation of litigation; and
- (b) there must be a reasonable prospect of such litigation at the time of the preparation of the document _ litigation must be more than just a vague or theoretical possibility.

In my view, the investigation report was prepared to fulfill the OWD's obligation to investigate a complaint. Accordingly, it is my view that the dominant purpose for the creation of this record cannot reasonably be argued to be its use in contemplated litigation. Litigation may have been a theoretical possibility but, in my view, this record was created predominantly in fulfillment of the OWD's responsibilities as an employer.

Given all of the above, I do not uphold the head's claim under section 19 of the Act.

ISSUE C: Whether all or any part of the requested record would qualify for exemption under section 13 of the Act.

Subsection 13(1) of the Act reads as follows:

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.

In developing the parameters of the section 13 exemption, I have enunciated the following principles.

In Order 94 (Appeal Number 880137), dated September 22, 1989, I stated that:

...in my view, section 13 was not intended to exempt all communications between public servants despite the fact that many can be viewed, broadly speaking, as advice or recommendations. As noted above, section 1 of the Act stipulates that exemptions from the right of access should be limited and specific. Accordingly, I have taken a purposive approach to the interpretation of subsection 13(1) of the Act. In my opinion, this exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision_making and policy_making.

More recently in Order 118 (Appeal Number 890172), dated November 15, 1989, I stated that:

In my view, "advice" for the purposes of subsection 13(1) of the Act, must contain more than mere information. Generally speaking, advice pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

Page 24 of the record contains the heading "Recommendations" which is followed by one and one_half pages of text. The first paragraphs on both pages 24 and 25 were provided to all of the appellants and are not at issue in these appeals. The second paragraph of page 24 reflects the investigators' findings or conclusions, and I will discuss this paragraph later in the

context of my disposition relating to the investigators' findings.

As noted above, appellants A and B have each been given access to those recommendations pertaining to themselves; appellant C was not given access to this information. Appellant C was given access to those recommendations pertaining to him and this information was not given to either appellant A or B. Consequently, each of the appellants has appealed the head's decision to refuse him or her access to parts of the record which the head believes contain recommendations pertaining to other individuals.

Having reviewed the record, I am of the view that the information contained on pages 24 (except for the second paragraph) and 25 qualifies for exemption under subsection 13(1) of the Act. This information clearly reflects the investigators' advice and recommendations to the Assistant Deputy Minister of the OWD. The advice and recommendations concern the investigators' views as to the appropriate follow-up to their investigation. Moreover, none of the exceptions to the exemption, listed in subsection 13(2) of the Act, apply in the circumstances of this case so as to compel the head to disclose the information in question. Accordingly, I find that pages 24 (except the second paragraph) and 25 of the record qualify for exemption under subsection 13(1).

I will now consider subsection 13(1) of the Act as it relates to the investigator's findings, being pages 22 and 23 and the second paragraph of page 24 of the record. As previously noted, the second paragraph on page 24, while included in that portion of the report headed "Recommendations", appears to me to be

related to the "Findings" section of the report and I will consider the paragraph in that context.

The findings of the investigators represent their conclusions surrounding the complaint made against appellant C. The findings also reflect the investigators' interviews with the appellants and the affected persons.

In my view, the findings contain information, be it factual or opinion. The findings do not pertain to the submission of a suggested course of action which would ultimately be accepted or rejected by the report's recipient during the deliberative process. The fact that the authors of the report themselves have denoted this section of the report as "Findings", as opposed to "Recommendations", lends credence to my view that this information does not qualify for exemption under subsection 13(1) of the Act.

Accordingly, the "Findings" (pages 22, 23 and the second paragraph of page 24) do not qualify for exemption under subsection 13(1) of the Act.

ISSUE D: If the answer to either Issue B or C is in the affirmative, whether the exemption provided by subsection 49(a) of the Act applies in the circumstances of these appeals.

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; (emphasis added)

...

I have found under Issue A that the contents of the record at issue in this appeal qualify as "personal information" about the appellants. Under Issue B I found that the section 19 exemption does not apply to any parts of the record in issue, and in Issue C I found that some parts of the record would

qualify for exemption under section 13, namely pages 24 (except the second paragraph) and 25. The exemption provided by subsection 49(a) therefore applies to those parts of the record which qualify for exemption pursuant to section 13, and gives the head the discretion to refuse disclosure.

In the circumstances of these appeals, the head has exercised her discretion and determined that each appellant should be given access to the recommendations of the investigators relating to that appellant only. I uphold the head's exercise of discretion in this regard and would not disturb it on appeal.

ISSUE E: Whether the head properly applied the discretionary exemption provided by subsection 49(b) of the Act in severing information from the requested record.

The head has refused access to the parts of the record containing names and summaries of interviews with persons other than each of the appellants, and to the findings under subsection 49(b) of the Act. As well, the names of those persons interviewed by the investigators were severed from the introduction to the report (last full paragraph of page 1) under this provision.

Subsection 49(b) of the Act provides that:

49. A head may refuse to disclose to the individual to whom the information relates personal information,

...

(b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

The provision introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their personal privacy. If the head determines that release of the information would

constitute an unjustified invasion of the other individual's personal privacy, then subsection 49(b) gives the head the discretion to deny access to the personal information of the requester.

Subsections 21(2) and (3) of the Act provide guidance in determining if disclosure of personal information would constitute an unjustified invasion of personal privacy.

The OWD cited subsection 21(3)(b) of the Act as a basis for denying access to that part of the introduction to the report (the last full paragraph of page 1) identifying those persons interviewed as well as the findings. As the record at issue in these appeals contains "personal information", the head is taken to have intended on exempting this information under subsection 49(b).

Subsection 21(3)(b) of the Act reads as follows:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

...

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

...

Despite the OWD's view that the findings contain personal information of individuals other than the appellants so as to trigger the application of subsection 49(b), the OWD did not reveal this information to these individuals so as to obtain their views regarding disclosure because the OWD is also of the opinion that subsection 21(3)(b) of the Act (and still

later, section 19) applied to exempt this information from disclosure. Apparently, the OWD is of the view that subsection 21(3)(b) purports to protect the interests of institutions in addition to the personal privacy rights of individuals.

The investigation which generated the record at issue in these appeals was conducted by Ministry of Government Services personnel in their capacity as human resources and staff relations specialists. As noted in the investigation report itself, the investigation focused on the Ontario Public Service definition of "coercive sexual harassment" and "abusive work environment".

While sexual harassment is a prohibited ground of discrimination under Ontario's Human Rights Code, this investigation was not conducted by, or on behalf of, the Ontario Human Rights Commission. That the complainants might have taken their concerns to that agency does not alter the fact that this investigation did not have, as its genesis, a possible violation of law.

Although the term "law" is not defined in the Act, in my view, employment policies and practices (in this case, within the Ontario Public Service) do not fall within the meaning of the word "law" as that word is used in subsection 21(3)(b) of the Act. Accordingly, I do not uphold the head's decision to exempt from disclosure the names of the persons interviewed as identified in the introduction or the findings which information was exempted from disclosure pursuant to subsection 21(3)(b) of the Act.

Given that the presumption raised by subsection 21(3)(b) of the Act does not apply in the circumstances of these appeals, I must now consider whether any of the criteria identified in subsection 21(2) of the Act apply so as to offer guidance in deciding whether disclosure of the personal information in the

introduction, the interview summaries and the findings, would unjustifiably invade the personal privacy of the affected persons.

Subsection 21(2) sets out some criteria to be considered by the head:

A head, in determining whether a disclosure of personal information constitutes an unjustified

invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

According to the OWD, disclosure of the personal information of the affected parties to the appellants would constitute an unjustifiable invasion of their personal privacy because the information could be considered defamatory or sensitive, and was supplied in confidence. Further, the OWD submitted that disclosure of the information would unfairly damage the reputation of persons referred to in the record because of the sensitive nature of the allegations and the OWD's response

thereto. In making these submissions, the head has invoked subsections 21(2)(f), (g), (h) and (i) of the Act.

As noted previously, certain individuals affected by the appeal consented to the release of their personal information, while others gave conditional consent and some did not respond to either the Notice of Appeal or to the Notice of Inquiry sent to them. Despite receipt of consent from certain of the individuals concerned, the OWD did not release the relevant personal information to any of the appellants.

I think it is also worth noting that the investigators did not check for accuracy that part of the report containing the summaries of interviews with each of the affected persons. Indeed, it was only during the mediation phase of these appeals that these individuals were provided with the opportunity to comment on the comments ascribed to them. In two cases, the individuals indicated to the Appeals Officer and to the Co_ordinator that the information did not accurately reflect the substance of their interviews. Accordingly, these two individuals requested that the OWD release their personal information to the appellants on condition that their own comments as to the accuracy of the statements be attached thereto.

By exempting the interview comments of the affected persons under subsection 49(b), the head is indicating that the disclosure of this information would unjustifiably invade the personal privacy of these persons such that the appellant's rights of access are outweighed.

Here, the affected persons were each given access to their personal information contained in the interview comments, as is their right under subsection 47(1) and having reviewed that information, several gave their consent to disclosure. Those who gave their consent are saying that, in their opinion, disclosure would not be an unjustified invasion of their personal privacy.

In the case of those two affected persons who gave conditional consent, it is my view that they are indicating not that disclosure would be an unjustifiable invasion of their personal privacy, but rather that their personal information is inaccurate, in their view. Subsection 47(2) gives a person the right to request correction of their personal information or, in the alternative, to require a statement of disagreement be attached to the information. The OWD is already in possession of letters equivalent to statements of disagreement of these two affected persons and should attach them to the relevant interview summaries.

Accordingly, in those cases where either consent or conditional consent has been given, I find that the personal information contained in the interview comments cannot be exempted from disclosure by the head under subsection 49(b) of the Act.

I turn now to the personal information of those affected persons who did not respond to the Appeals Officer's letter in which consent was sought. It was presumed by this office that their lack of response implied no consent and accordingly, these affected persons were provided with copies of the Appeals Officer's Report and invited to make representations in response

thereto. Again, these affected persons did not respond to the Notice of Inquiry issued with the Appeals Officer's Report.

The personal information contained in the interview summaries relates to these individuals' observations and knowledge of events, and their opinions about the allegation which precipitated the investigation.

In the circumstances of this case, I am mindful that the personal information of these affected persons (those persons interviewed by the investigative team and who have not provided consent to the disclosure of their personal information) relates to the employment context generally and the allegation respecting the appellant C specifically. I am also mindful that the appellants, and in particular appellant C who has received a letter of reprimand, each have an interest in knowing the factual basis on which the investigators' findings and recommendations were based.

In the circumstances of this case, the OWD has not provided sufficient evidence as to the application of subsections 21(2) (f), (g), (h) and (i) of the Act. In weighing the appellants' rights of access to information relating to themselves, and the rights of the affected persons to protection of personal privacy, I am particularly mindful of subsection 21(2) (d).

Accordingly, I find that the disclosure of the affected persons' personal information would not be an unjustified invasion of their personal privacy so as to exempt this information from disclosure pursuant to subsection 49(b) of the Act. It is my conclusion, therefore, that the head must disclose to the

appellants the comments of those persons interviewed by the investigators, notwithstanding the absence of consent.

With respect to the personal information contained in the findings, I am of the view that disclosure of this information to the appellants would not result in an unjustified invasion of the personal privacy of the affected persons. My reason for reaching this conclusion is the same as noted above in my discussion respecting the interview summaries, as the findings are reflective of the summaries.

Before concluding, I wish to note that the OWD also made a number of policy arguments in its written representations in support of the head's decision. These arguments related to the "privileged communication doctrine", and the need to promote a safe work environment where persons can make complaints about colleagues in confidence.

As compelling as these arguments may be, they were not couched in the language of any exemption contained in the Act. As stated above, one of the principles of the Act is that information should be available to the public and exemptions from the right of access should be limited and specific. To deny access to a record on a public policy basis, no matter how compelling, offends this principle unless that public policy has been addressed by the Legislature in the form of an exemption from disclosure.

In summary, my Order is as follows:

1. I order the head to release the memorandum of transmittal to the appellants.

2. I uphold the head's decision to sever pages 24 (except for the second paragraph) and 25 of the record pursuant to subsections 13(1) and 49(a) of the Act.
3. I order the head to release the balance of the record (except for that part of page 24 and page 25 as outlined in point 2 above) to the appellants.
4. I order the head to attach the letters (serving as statements of disagreements) already in her possession from the two affected persons to the relevant parts of the interview summaries.
5. I further order the head not to release the balance of the record until thirty (30) days following the date of the issuance of this Order. This time delay is necessary to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the record is released.
6. Provided notice of application for judicial review has not been served on the OWD and/or my office within this 30_day period, I order that the record be released to the appellants within thirty_five (35) days of the date of this Order. The head is further ordered to advise my office in writing within five (5) days of the date on which disclosure was made.

Original signed by: _____

April 24, 1990

Sidney B. Linden
Commissioner

Date