



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

ORDER P-330

Appeal P-9200098

Ontario Human Rights Commission



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ORDER

BACKGROUND:

The requester's client was a student at a named university from September 1988 to April 1989 where he was enrolled in a "master class" in a specified subject. He filed a complaint with the Ontario Human Rights Commission (the institution) alleging discrimination by the university under the Ontario Human Rights Code (the Code).

Following an investigation, the institution decided not to request that the Minister appoint a Board of Inquiry to hear the complaint. The requester asked for a reconsideration of this decision by the institution. The file was reviewed by a reconsideration officer and the original decision was affirmed. The requester then filed a court application for judicial review of the institution's decision. During the course of preparing for the judicial review hearing, the institution discovered a deficiency in its original investigation, and, with the consent of the requester, the judicial review application was withdrawn and the investigation reopened. After completing this phase of the investigation, the institution affirmed its decision not to request that the Minister appoint a Board of Inquiry to hear the complaint, and the requester again asked that the matter be reconsidered by the institution. This reconsideration process is currently underway and has not yet been completed.

The requester sought access to the following information:

Investigator's (Anita Fox) file regarding investigation into a human rights complaint made by [requester's client] against [a named university] ...

The scope of the request was clarified by the requester to exclude documents which were submitted to the institution by the requester and documents which had been provided to the requester by the institution during the course of processing his complaint. The request also excludes two records which are the subject of Appeal #P-920097.

The records which are at issue in this appeal are described as follows:

- a) documents submitted to the institution by the university and documents sent by the institution to the university;
- b) officers' investigation notes and reports;
- c) inter-staff memoranda;
- d) administrative forms.

The institution denied access to all responsive records, claiming sections 14(1)(a) and (b), 14(2)(a), 13 and 21 of the Act. The institution's decision letter reads, in part, as follows:

Case [a number] is currently at the reconsideration stage and therefore our law enforcement process is still ongoing. In our opinion, any premature disclosure of these records outside of the investigation process could reasonably be expected to interfere with said process. The whole file is therefore exempt by virtue of subsection 14(1)(a)(b) of the Act ...

...

Additionally, we would advise that individual records are also covered by other specific exemptions. Thus, these records contain personal information relating to identifiable third party individuals and such information would be exempt under section 21(1) of the Act which requires the head of the institution to refuse to disclose such personal information because doing so would be presumed to constitute unjustified invasion of personal privacy per subsection 21(3)(b) of the Act. Also, officers' investigation notes and reports constitute reports prepared in the course of law enforcement which are exempt under subsection 14(2)(a) of the Act. Finally, categories "c" and "d" contain advice and recommendations of persons employed in the service of the Commission and therefore are exempt under section 13(1) of the Act.

The requester appealed the institution's decision to this office.

A copy of the record was obtained and reviewed by the Appeals Officer. It is 72 pages in length and consists of various letters, investigative notes and materials, memoranda and other administrative documents. Appendix A lists the content of the record using the institution's numbering scheme.

Attempts to mediate this appeal were not successful, and the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the decision of the head was sent to the appellant and the institution. Enclosed with each notice was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. Representations were received from both parties.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.

- B. Whether any part of the record satisfies the requirements of the discretionary exemption provided by sections 14(1)(a) and/or (b) of the Act.
- C. Whether any part of the record satisfies the requirements of the discretionary exemption provided by section 13(1) of the Act.
- D. Whether any part of the record satisfies the requirements of the discretionary exemption provided by section 14(2)(a) of the Act.
- E. Whether any part of the record satisfies the requirements of the mandatory exemption provided by section 21 of the Act.
- F. If the record contains the personal information of the appellant and the answer to any of Issues B, C or D is yes, whether the discretionary exemption provided by section 49(a) of the Act applies.
- G. If the record contains the personal information of individuals other than the appellant, whether the discretionary exemption under section 49(b) of the Act applies to any part of the record.

ISSUE A: Whether the information contained in the record qualifies as "personal information" as defined in section 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 falls within the definition of "personal information" as set out in section 2(1) of the Act, and to determine whether this information relates to the appellant, another individual or both.

Section 2(1) of the Act reads, in part, 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,

...

- (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;

I have examined the record and, in my view, all pages with the exception of pages 2, 15, 16 and 70 contain information which satisfies the requirements of the definition of personal information. I find that the information on pages 1, 3, 4, 9-14, 49-51, 58-69 and 71 contain the personal information of the appellant only; the information on pages 5-8, 17, 19-48 and 52-57 is properly considered the personal information of both the appellant and other identifiable individuals; and the information on page 18 contains the personal information of identifiable individuals other than the appellant. Pages 2, 15, 16 and 70 do not contain personal information of any identifiable individual.

ISSUE B: Whether any part of the record satisfies the requirements of the discretionary exemption provided by sections 14(1)(a) and/or (b) of the Act.

The institution claims that sections 14(1)(a) and (b) of the Act apply to the entire record.

Sections 14(1)(a) and (b) 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 record, and it is clear that it was generated in the course of the institution's investigation of a complaint under 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 (Orders 89, 178, 200, P-221, P-253, P-258, and P-322).

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 has applied for reconsideration of his complaint, and, in my view, 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.

As far as the issue of interference with an investigation under the Code is concerned, consistent with previous orders, I find that the reconsideration process necessarily includes making use of certain investigation related records, and any record, the disclosure of which could reasonably be expected to interfere with the institution's investigation of the complaint, is properly exempt under sections 14(1)(a) and (b) of the Act.

Having reviewed the record, I find that disclosure of pages 5-8 and 15-71 could reasonably be expected to interfere with the complaint investigation, and qualify for exemption. However, I find that pages 1-4 and 9-14 contain information which relates to various administrative stages in the processing of the appellant's complaint, and are not sufficiently connected to the actual investigation to satisfy the requirement for exemption under sections 14(1)(a) or (b).

Sections 14(1)(a) and (b) provide the head with the discretion to release a record even if it satisfies the requirements for exemption. I have reviewed the head's reasons for exercising discretion in favour of not disclosing all exempt pages which do not include the personal information of the appellant, and I find nothing improper and I would not alter the head's decision on appeal.

Because I have found that pages 1-4 and 9-14 do not qualify for exemption under sections 14(1)(a) or (b) of the Act, and the institution has not claimed any other exemptions with respect to these pages, I order that they be disclosed to the appellant in their entirety.

Also, because I have found that pages 5-8 and 15-71 of the record qualify for exemption under sections 14(1)(a) and (b) of the Act, it is not necessary for me to consider Issues C, D, E and G.

ISSUE F: If the record contains the personal information of the appellant, and the answer to any of Issues B, C or D is yes, whether the discretionary exemption provided by section 49(a) of the Act applies.

In Issues A and B, I found that pages 1, 3-14, 17, 19-69 and 71 contain the personal information of the appellant, and that pages 5-8 and 15-71 qualify for exemption under sections 14(1)(a) and (b) of the Act.

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]

Section 49(a) provides the head with the discretion to refuse to disclose to the appellant his own personal information where section 14 applies. In any case in which the head has exercised discretion under section 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 reviewing the head's exercise of discretion in favour of refusing to disclose the parts of the record indicated above, I have found nothing to indicate that the exercise of discretion was improper, and will not alter it on appeal.

ORDER:

1. I uphold the head's decision not to disclose pages 5-8 and 15-71 of the record.
2. I order the head to disclose pages 1-4 and 9-14 of the record to the appellant in their entirety within fifteen (15) days from the date of this order and to advise me in writing within five (5) days of the date on which disclosure was made. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with the provisions of this order, I order the head to provide me with a copy of the portions of the record which are disclosed to the appellant pursuant to Provision 2, upon my request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ July 16, 1992

APPENDIX A

PAGE NUMBER	DESCRIPTION
1-2	Letter from O.H.R.C. to respondent university's counsel dated April 27, 1989
3	Letter from respondent university's counsel to O.H.R.C. dated April 28, 1989
4-5	Letter from respondent university's counsel to O.H.R.C., with attachment, dated May 31, 1989
6	Letter from respondent university's counsel to O.H.R.C. dated May 3, 1989
7-8	Letter from respondent university's counsel to O.H.R.C. dated August 14, 1989
9-10	Letter from O.H.R.C. to respondent university's counsel dated January 10, 1990
11-12	Letter from O.H.R.C. to respondent university's counsel dated December 30, 1991
13	Letter from respondent university's counsel to O.H.R.C. dated January 6, 1992
14	Letter from respondent university's counsel to O.H.R.C. dated August 10, 1989
15-48	Investigation notes of Human Rights Officer NOTE: This record contains two pages which have been numbered "20". For the purpose of this order, the first of these pages will be referred to as "page 20a" and the second as "page 20b".
49-50	Case Disposition form
51	O.H.R.C. internal memorandum regarding reconsideration request dated April 26, 1990
52-57	O.H.R.C. internal memorandum regarding reconsideration request dated March 27, 1990

- 58 Minutes of O.H.R.C. meeting of November 14-15, 1989 regarding appellant's complaint
- 59 Minutes of O.H.R.C. meeting of June 18-20, 1990 regarding appellant's complaint

PAGE NUMBER

DESCRIPTION

- 60 O.H.R.C. internal memorandum dated November 9, 1989
- 61 O.H.R.C. internal memorandum dated November 22, 1989
- 62 O.H.R.C. internal memorandum dated August 28, 1989
- 63 O.H.R.C. internal memorandum dated April 24, 1989
- 64 O.H.R.C. internal memorandum dated April 10, 1989
- 65-66 O.H.R.C. internal memorandum dated September 20, 1991
- 67-71 O.H.R.C. internal administrative complaint processing forms