



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

# ORDER P-466

Appeal P-9300011

Ontario Human Rights Commission



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# ORDER

## BACKGROUND:

The Ontario Human Rights Commission (the OHRC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for all records, including statements, made by the current and former employees of Flight Safety Canada, relating to File No. 65-476M. The OHRC denied access to the responsive records pursuant to sections 14(1)(a) and (b) of the Act, as it argued that a law enforcement investigation was still ongoing. The requester appealed the decision.

During the mediation stage of the appeal, the OHRC confirmed that the investigation had been completed. The appellant then narrowed his request for access to only those records that contained his personal information. The OHRC responded by granting the appellant access to portions of the records in question. The OHRC, however, decided to deny access to the remainder of the records pursuant to sections 21(3)(b) and 49(b) of the Act.

Notice that an inquiry was being conducted to review the OHRC's decision was sent to the appellant and the OHRC. Written representations were received from both parties.

The records that remain at issue in this appeal are:

- (1) The reports of a number of interviews (questions, answers and notes) (pages 60-64, 120-122, 132-135, 146-148, 163-164, 166-168 and 175-177).
- (2) Letters submitted to the OHRC by a third party (pages 56-58, 91-94, 97-98, 104 and 236-239).

## ISSUES:

The issues arising in this appeal may be stated as follows:

- A. Whether the information contained in the records qualifies as "personal information", as defined by section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies.

## SUBMISSIONS/CONCLUSIONS:

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

"Personal information" is defined in section 2(1) of the Act, 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,
- ...
- (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;

I have carefully reviewed the records at issue in this appeal and find that they all contain personal information as described in one or more of the aforementioned paragraphs of section 2(1) of the Act. The personal information relates both to the appellant and to other identifiable individuals.

**ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies.**

I have found under Issue A that the information in the records qualifies as "personal information" under the Act and that the personal information relates to the appellant and to other identifiable individuals.

Section 47(1) of the Act gives individuals a general right of access to personal information about themselves, which is 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. One such exemption is found in section 49(b) of the Act, which reads:

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

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

As has been stated in previous orders, section 49(b) introduces a balancing principle. The head of an institution must look at the information and weigh the requester's right of access to his or her own personal information against the rights of other individuals to the protection of their privacy. If the Ministry determines that the release of the information would constitute an unjustified invasion of the other individuals' personal privacy, then section 49(b) gives the Ministry the discretion to deny the requester access to the personal information (Order 37).

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy of the individual to whom the information relates. Section 21(2) provides a non-exhaustive list of criteria for an institution to consider in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy, while section 21(3) lists certain types of information, whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) outlines specific types of information, whose disclosure would not constitute an unjustified invasion of personal privacy.

The OHRC submits that the information in the records was compiled and is identifiable as part of an investigation into a possible violation of law and, therefore, that the presumption contained in section 21(3)(b) of the Act applies. Section 21(3)(b) reads as follows:

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

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;

It has been established in previous orders that investigations into complaints made under the Ontario Human Rights Code (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, themselves, properly considered law enforcement proceedings (Orders 200 and 242). I have carefully reviewed the records in this appeal and I find that the personal information contained in the records was compiled and is part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of the personal privacy under section 21(3)(b) have been met.

I have also reviewed section 21(4) of the Act and, in my view, that provision is not applicable to the facts of this case.

The appellant submits that section 21(2)(d) is a relevant consideration to the circumstances of this appeal. He further states that he has filed a complaint with the Commission and that he requires access to the information in the records in order to "...protect [himself] and [his] children from a case of severe harassment...". The appellant also notes that this appeal is part of his ongoing attempts, over the last five years, to discover the identity of the harassers.

In Order 20, former Commissioner Sidney B. Linden made the following comments about the application of the presumptions contained in section 21(3) of the Act:

Clearly subsection 21(3) is very important in terms of the privacy protection portion of the Act. It specifically creates a presumption of unjustified invasion of personal privacy and in so doing delineates a list of types of personal information which were clearly intended by the legislature not to be disclosed to someone other than the person to whom they relate without an extremely strong and compelling reason.

The former Commissioner went on to state that "... a combination of the circumstances set out in section 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view, such a case would be extremely unusual." I agree with this evaluation.

Even if I were prepared to find that section 21(2)(d) is a relevant factor in the circumstances of this appeal, this factor alone is not sufficient to outweigh the presumption of an unjustified invasion of personal privacy established under section 21(3)(b). I have carefully considered the

provisions of section 21(2) which weigh in favour of disclosure and the representations of the appellant and, in my view, there are no other factors, either listed or unlisted, which are relevant in the circumstances of this appeal. I, therefore, find that the presumption of an unjustified invasion of the privacy of other individuals has not been rebutted and that the disclosure of the records would constitute an unjustified invasion of the privacy of these individuals.

Section 49(b) is a discretionary exemption which allows OHRC to deny a requester access to his or own personal information if disclosure of the information would constitute an unjustified invasion of another individual's personal privacy. The OHRC has provided representations regarding its decision to exercise discretion in favour of denying access in the circumstances of

this appeal. I have reviewed these representations. I find nothing improper in the OHRC's exercise of discretion, and would not alter this determination on appeal.

**ORDER:**

I uphold the decision of the OHRC.

Original signed by: \_\_\_\_\_  
Irwin Glasberg  
Assistant Commissioner

\_\_\_\_\_ May 28, 1993