



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

ORDER P-507

Appeal P-9300118

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 access to the investigation file of a complaint, identified by its file number. The requester is the solicitor for the city which is the respondent in the human rights complaint. The OHRC denied access to the records pursuant to sections 14(1)(a) and (b) of the Act. The requester appealed the denial of access. Subsequent to the appeal, the OHRC added sections 14(2)(a), 21 and 13(1) to the exemptions previously claimed.

During the processing of the appeal, the OHRC was willing to disclose correspondence between the appellant and the OHRC; however, the appellant indicated that he was not interested in receiving this information as it was already in his possession.

The records at issue in this appeal consist of two record groups, as identified by the OHRC:

1. Record of Intake with attachments (pages 1 to 186);
2. Record of Investigation with attachments (pages 187 to 279).

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the OHRC was sent to the appellant and the OHRC. Representations were received from both parties.

ISSUES:

- A. Whether the discretionary exemptions provided by sections 14(1)(a) and/or (b) of the Act apply to the records.
- B. Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to the records.
- C. Whether the record contains personal information as defined by section 2(1) of the Act.
- D. If the answer to Issue C is yes, whether the mandatory exemption provided by section 21 of the Act applies to the records.
- E. Whether the discretionary exemption provided by section 13(1) of the Act applies to the records.

SUBMISSIONS/CONCLUSIONS

ISSUE A: Whether the discretionary exemptions provided by sections 14(1)(a) and/or (b) of the Act apply to the records.

The OHRC submits that sections 14(1)(a) and (b) apply to all of the records at issue in this appeal. These sections 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;

In order for the records to be considered for exemption under these sections, the matter which generated the records must satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. It has been established in a number of previous orders that investigations into complaints made under the Ontario Human Right's 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 properly considered law enforcement proceedings (Orders 89, 178, 200 and 221). I find that the records at issue in this appeal were similarly generated.

The OHRC submits that the records at issue relate to an on-going investigation of a complaint filed under the Code and that their disclosure could reasonably be expected to interfere with this investigation. The OHRC indicates in its representations that disclosing information contained in the records would reveal information that could be used to influence the direction of the investigation; tip the respondent to clues and direction of the investigation; and allow an opportunity to tamper with the evidence and influence witnesses.

The appellant agrees that the investigation by the OHRC of the complaint has not been concluded. However, he submits:

... in considering whether there is a likelihood of interference with a law enforcement matter please keep in mind that the body making the request is a municipality. The municipality is not going to intimidate witnesses, tamper with evidence or in any other way interfere with the Human Rights officer in the carrying out of her duties.

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

In Order 178, Commissioner Tom Wright found that disclosure of the records to a party with an interest in the investigation must be viewed as disclosure to the public generally. Premature and unlimited access by the public to such information could interfere with the investigation undertaken by the OHRC. I agree with Commissioner Wright's view.

Having considered the representations of the parties and having examined the contents of the records, it is my view that disclosure of the records at issue in this appeal could reasonably be expected to interfere with the OHRC's investigation of the complaint. Accordingly, I find that the records qualify for exemption under section 14(1)(b) of the Act.

Section 14(1)(b) is a discretionary exemption, which allows the OHRC to disclose the record even if they meet the test for exemption. I have reviewed the OHRC's representations and I find nothing improper in the exercise of discretion. I would not alter it on appeal.

Because of the manner in which I have disposed of Issue A, it is not necessary for me to consider Issues B through E.

ORDER:

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

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ July 30, 1993