



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

## **ORDER P-552**

**Appeal P-9200700**

**Humber College of Applied Arts and Technology**



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# ORDER

## BACKGROUND:

The Humber College of Applied Arts and Technology (the College) received a request pursuant to the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to an investigation conducted by the College with respect to a complaint of sexual harassment made by a named individual (the affected person) against the requester.

The College identified 28 individual records as being responsive to the request, granted access to some records and withheld the remaining, in whole or in part, pursuant to sections 13 and 21 of the Act. The requester appealed the denial of access.

During mediation the number of records at issue was reduced to ten, the College withdrew its claim for exemption under section 13 of the Act and claimed the application of section 49(b). It was not possible to completely resolve this appeal through mediation, therefore, notice that an inquiry was being conducted to review the decision of the College was sent to the College, the appellant and the affected person. Representations were received from the College and the affected person.

## RECORDS AT ISSUE:

The records which remain at issue are:

1. A letter from the affected person to the College (three pages).
2. A letter from General Counsel of the College to the affected person, being a response to Record 1 (one page).
3. A letter from General Counsel of the College to the Freedom of Information and Protection of Privacy Co-ordinator - Ministry of Colleges and Universities (now the Ministry of Education and Training) (one page). The only information not disclosed in this record relates to the identity of the complainant.
4. Handwritten notes taken by the College's Director of Human Resources during her telephone conversation with an employee of the College regarding the complaint (one page).
5. A letter from the College's Director of Human Resources to the affected person (two pages).
6. Handwritten notes of the College's Director of Human Resources made during her telephone conversation with an official of the Ontario Human Rights Commission (three pages).
7. An internal College telephone message slip (one page).

8. A letter from the Ontario Human Rights Commission to the College's Director of Human Resources (two pages).
9. A letter from the College's solicitor to the Ontario Human Rights Commission (one page).
10. A letter from the College's solicitor to the Ontario Human Rights Commission (one page).

## **ISSUES:**

The issues arising in this appeal are:

- A. Whether the records at issue contain "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the personal information relates to the requester and other individuals, whether section 49(b) of the Act applies.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the records at issue contain "personal information" as defined in section 2(1) of the Act.**

Section 2(1) of the Act states, in part:

"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;

Having reviewed the records, I find that all of the records contain information which satisfies the definition of personal information under section 2(1) of the Act. In my view, this personal information relates both to the appellant and the affected person.

**ISSUE B: If the answer to Issue A is yes, and the personal information relates to the requester and other individuals, whether section 49(b) of the Act applies.**

Under Issue A, I found that the records contain the personal information of both the appellant and the affected person.

Section 47(1) of the Act gives individuals a general right of access to 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 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;

Section 49(b) introduces a balancing principle. The College must look at the information and weigh the requester's right of access to his/her own personal information against the rights of other individuals to the protection of their personal privacy. If the College determines that the release of the information would constitute an unjustified invasion of the other individuals' personal privacy, then section 49(b) gives the College the discretion to deny the requester access to the personal information.

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 49(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

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 an individual's personal privacy. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

In its representations, the College submits that the presumption under section 21(3)(b) applies to Records 5, 6 and 8. This section reads:

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;

The College submits that Records 5, 6 and 8 qualify for exemption under section 21(3)(b) because the "records were compiled in anticipation of a Human Rights Complaint". Section 21(3)(b) applies to personal information which was compiled and is identifiable as part of an investigation into a possible violation of law. In my view, the section does not protect personal information compiled "in anticipation" of an investigation into a possible violation of law. Therefore, I find that section 21(3)(b) does not apply in the circumstances of this appeal.

I also find that none of the records at issue contain personal information which falls under the ambit of section 21(4) of the Act.

The College submits that the considerations under sections 21(2)(f) and (h), which favour non-disclosure of personal information, are relevant in the circumstances of this appeal.

Sections 21(2)(f) and (h) read as follows:

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,

(f) the personal information is highly sensitive;

- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

Specifically, the College states that the personal information contained in Records 1, 2, 4, 5, 6 and 8 is "highly sensitive" and was supplied by the affected person in confidence. The affected person objects to the disclosure of the records because disclosure "would involve a serious and unwarranted invasion of my personal privacy, since this is a very sensitive information".

With regard to the consideration under section 21(2)(f), it is my view that when an allegation of sexual harassment is made and investigated, it is reasonable for the parties directly involved (the complainant and the respondent) to find the experience distressing and to restrict discussion of the subject with others. In my view, generally, section 21(2)(f) would be a relevant consideration in determining whether disclosure of personal information compiled during this process would constitute an unjustified invasion of the privacy of both parties. However, in my view, section 21(2)(f) is not a relevant consideration when the requester is one of the parties directly involved and the personal information relates to the identity of the complainant, the substance of the complaint, the respondent's response to the complaint, the status or outcome of the investigation and other similar information which is essential to the proper and fair investigation/resolution of the complaint.

Accordingly, in the circumstances of this appeal, I find that section 21(2)(f) is not a relevant consideration in respect of information which reveals to the appellant the identity of the affected person, the substance of her complaint, and the status or outcome of the investigation/resolution of the complaint.

With regard to section 21(2)(h), in my view, confidentiality of personal information compiled during the process of receiving and investigating complaints of sexual harassment should be maintained in order to protect the personal privacy of all individuals involved in the process and to encourage full and frank communication between them and the institution. While the need to conduct a fair and thorough investigation of the complaint demands the disclosure of a substantial amount of information to the parties directly involved (the complainant and the respondent), in my view, the parties are not entitled to know every bit of information communicated to the institution by each other.

In the circumstances of this appeal, I find that section 21(2)(h) is a relevant consideration in respect of information communicated by the affected person to the officials of the College and to the Ontario Human Rights Commission, but not to the information which reveals the identity of the complainant, the substance of her complaint and the status or outcome of the investigation/resolution of the complaint.

Having carefully examined the contents of the records and the representations submitted to me, I find that section 21(2)(h) is a relevant consideration with respect to Records 1, 2, 4 and 6. None of the considerations in section 21(2) which favour disclosure apply to these records, and accordingly, I find that their disclosure to the appellant would constitute an unjustified invasion of the privacy of the affected person, in the circumstances of this appeal.

In my view, none of the considerations under section 21(2) which favour non-disclosure apply to Records 3, 5, 7, 8, 9 and 10 and, accordingly, I do not find that their disclosure to the appellant would constitute an unjustified invasion of the privacy of the affected person, in the circumstances of this appeal.

Therefore, only Records 1, 2, 4 and 6 qualify for exemption under section 49(b) of the Act. Section 49(b) is a discretionary exemption giving the College the discretion to refuse to disclose personal information to the person to whom it relates. I have reviewed the College's representations, and I find nothing to indicate that the exercise of discretion was improper in the circumstances.

**ORDER:**

1. I uphold the College's decision to withhold Records 1, 2, 4 and 6.
2. I order the College to disclose to the appellant Records 3, 5, 7, 8, 9 and 10 within thirty-five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with the provisions of this order, I order the College to provide me with a copy of the records which it has disclosed to the appellant pursuant to Provision 2, only upon request.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_  
October 13, 1993