



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-854

Appeal P-9400109

Ministry of Housing



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Housing (the Ministry) received a request for access to information relating to the requester's complaint of workplace discrimination and harassment against his employer, the Metropolitan Toronto Housing Authority (MTHA).

The Ministry located a large number of records responsive to the request and granted access to 100 of them. Access to a portion of one page of one of these records was denied. Access was also denied to a further 539 pages of records in their entirety. These documents are described in detail in Appendix "A" to this order. The Ministry relied upon the following exemptions contained in the Act to deny access to the withheld records:

- invasion of privacy - sections 21(1) and 49(b).

The requester appealed the Ministry's decision to deny access. A Notice of Inquiry was provided to the appellant, the Ministry, five respondents to the complaint and six individuals who gave statements during the investigation (the witnesses). Representations were submitted by the appellant, the Ministry, and four of the respondents. Further representations were solicited from the four respondents. Additional submissions were received from two of these individuals.

I have designated those records contained in the Ministry's "Main" file with the letter "M", the "Legal" file with the letter "L" and the remaining "Other" records by the letter "O".

In its representations, the Ministry withdrew its exemption claim for Records M214-M216, M219-M221, M223-M227, M236-M238, and M245-M257. I will, therefore, order that these records be disclosed in their entirety to the appellant.

In addition, Records M245, M246, L96-L102, L124-L131 (with the exception of the undisclosed information contained in Record L130), L179 and L267 are duplicates of records which were initially disclosed by the Ministry in response to the request, and are, therefore, no longer at issue in this appeal.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have carefully reviewed the information which has been withheld to determine whether it qualifies as personal information and if so, to whom the personal information relates.

I find that the records in the Ministry's Main and Legal files contain the appellant's personal information as they relate to investigations into his complaint. Some of these records also contain the personal information

of other individuals. Further, I find that Records O101-O116 contain only the personal information of individuals other than the appellant. I will first deal with the application of section 49(b) of the Act to those records which contain the personal information of the appellant.

Records which contain the personal information of the appellant

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 of the Act provides a number of exceptions to this general right of access.

Under section 49(b), where a record contains the personal information of both the appellant and other individuals and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the requester access to that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

In its representations, the Ministry submits that the following factors under section 21(2) favour non-disclosure of the personal information contained in these records:

- the information is highly sensitive - section 21(2)(f)
- the information has been supplied in confidence - section 21(2)(h)

The Ministry submits that the privacy of those persons who were interviewed during the investigation must be protected so as not to deter individuals from providing testimony regarding workplace discrimination and harassment. The respondents indicate that the disclosure of their personal information which is contained in these records would have a potentially negative impact in their workplace, and that their privacy is best protected by denying access to the records.

The appellant submitted detailed representations which explain the history of his complaint and the manner in which it was processed. He indicates that the disclosure of the information contained in the records would not constitute an unjustified invasion of privacy, and that he has the right to know the result of the investigation of his complaint. He does not, however, make reference to any of the listed considerations described in section 21(2) of the Act nor to any other relevant factors which favour the disclosure of the personal information of other individuals.

Main File Records

The records in the Main file consist primarily of the complaint, correspondence to the respondents advising them of the complaint, the respondents' replies, witness statements and investigative summaries or reports.

Having reviewed the evidence before me, I make the following findings with respect to these records:

- (1) None of the personal information in the records fall within the presumptions contained in section 21(3) of the Act.
- (2) Many past orders have indicated that some information in connection with harassment investigations is highly sensitive within the meaning of section 21(2)(f), and that some information collected in the context of such investigations may be provided in confidence within the meaning of section 21(2)(h). However, it has also been found that the parties to a harassment complaint are entitled to know the nature of the complaint as well as the direct responses to the allegations which have been made. In addition, where, as in this case, the investigation has been completed it is essential that the parties, particularly the complainant, be advised as to how the complaint was resolved (Order P-694).

In my view, in the circumstances of this appeal, sections 21(2)(f) and (h) are relevant considerations with respect to the personal information of the respondents to the complaint, except for that information which directly addresses the substance of the complaint and the findings.

- (3) I also find that the names of witnesses and other personal information contained in the records which could identify them (except information relating to the substance of the complaint and the findings) is information which is highly sensitive (section 21(2)(f)) and which was provided in confidence (section 21(2)(h)).
- (4) Having balanced the factors favouring privacy protection against the appellant's right to access his own personal information, and having considered all of the circumstances of this appeal, I find that the disclosure of the personal information referred to above would be an unjustified invasion of the personal privacy of the respondents and witnesses and it is, therefore, properly exempt under section 49(b) of the Act. I have highlighted in yellow on the copy of the records provided to the Ministry's Freedom of Information and Privacy Co-ordinator those portions of the Main file records which relate to the respondents and witnesses and are exempt from disclosure under section 49(b).

Legal File Records

The records contained in the Legal file consist of memos, correspondence and administrative documents involving the legal considerations surrounding the appellant's complaint. I make the following findings with respect to these records:

- (1) Certain records in the Legal file contain only the personal information of the appellant, and, therefore, do not qualify for exemption under section 49(b).
- (2) None of the presumptions provided by section 21(3) apply to the information contained in the Legal

file records.

- (3) I find that the undisclosed information contained in Record L130, as well as portions of the personal information of other individuals which are contained in the Legal files may be characterized as highly sensitive information under section 21(2)(f). This information does not relate to the substance of the complaint or the investigation.
- (4) Having balanced the factors favouring privacy protection against the appellant's right to access his own personal information, and having considered all of the circumstances of this appeal I find that the disclosure of the personal information referred to above would be an unjustified invasion of the personal privacy of the respondents and witnesses and it is, therefore, properly exempt under section 49(b) of the Act. I have highlighted in yellow on the copy of the records provided to the Ministry's Freedom of Information and Privacy Co-ordinator those portions of the Legal file records which relate to the respondents, witnesses and other individuals and are exempt from disclosure under section 49(b). Those portions of the records which are highlighted fall within the exemption provided by section 49(b) and **should not** be disclosed.

Records which contain the personal information of other individuals only

I have found that Records 0101-0116 contain only the personal information of individuals other than the appellant.

Section 21(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than the individual to whom the information relates. There are a number of exceptions to this rule, one of which is found in section 21(1)(f) of the Act. This section provides that a government institution must refuse to release the personal information of another individual except if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of this nature.

If none of the presumptions outlined in section 21(3) apply, the government institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant to the appeal.

Records O101-O116 relate to personnel matters, and not to the substance of the harassment complaint. They contain the personal information of individuals other than the appellant, only.

As section 21(1) is a mandatory exemption, and in the absence of any considerations weighing in favour of disclosure, I find that the disclosure of Records O101-O116 would constitute an unjustified invasion of privacy of the individuals to whom the information relates. This information should not, therefore, be disclosed to the appellant.

ORDER:

1. I uphold the decision of the Ministry to deny access to Records O101-O116 and to those portions of the records contained in the Main and Legal files which are highlighted **in yellow** on the copy of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order. The yellow highlighted portions **should not** be disclosed to the appellant.
2. I order the Ministry to disclose to the appellant Records M214-M216, M219-M221, M223-M227, M236-M238, and M245-M257 and those portions of the remaining records contained in the Main and Legal files which have **not** been highlighted on the copies sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
3. I order the Ministry to disclose the information described in Provision 2 within thirty-five (35) days of the date of this order but not earlier than the thirtieth (30) day after the date of this order.
4. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ February 2, 1995

APPENDIX "A"

PAGE NUMBER	DESCRIPTION OF RECORD	EXEMPTION CLAIMED	DISPOSITION
L1-L37	Cover memorandum with Investigation Report dated December 15, 1993	21, 49(b)	Disclosed in part
L38-L62	Notes and memoranda dated January 21 and 26, 1994	21, 49(b)	Disclosed in part
L63-L66 and L68	Memorandum dated January 20, 1994	21, 49(b)	Disclosed in part
L67, L72-L80, L82-L90, L95, L117	Administrative correspondence	21, 49(b)	Disclosed in part
L91-L94	Correspondence relating to WCB Claim	21, 49(b)	Disclosed in part
L81, L106-L116, L156, L157, L159-L188, L190-L198, L203-L266	Correspondence relating to OHRC Complaint	21, 49(b)	Disclosed in part
L118-L122	Letter dated May 4, 1993 with letter from appellant attached	21, 49(b)	Disclosed
L123, part of L130	Letter dated April 28, 1993 with attached minutes of June 24, 1992	21, 49(b)	Disclosed
L132-L154	Respondent's replies to Race Relations Questionnaire	21, 49(b)	Disclosed with severances at pages L150 and L151
L155	Cover memorandum dated March 20, 1993	21, 49(b)	Disclosed
L158	Memorandum dated April 19, 1993	21, 49(b)	Disclosed
L189	Memorandum dated March 30, 1993	21, 49(b)	Disclosed
M1-M4	Notes dated July 2, 1993 and January 31, 1992	21, 49(b)	Disclosed in part
M5-M31	Correspondence to Respondents from Director, MTHA Race Relations	21, 49(b)	Disclosed in part
M32-M117	Witness Statements, Respondent's replies	21, 49(b)	Disclosed in part

PAGENUMBER	DESCRIPTION OF RECORD	EXEMPTION CLAIMED	DISPOSITION
M118-M153	Investigation report dated December 15, 1993	21, 49(b)	Disclosed in part
M154-M188	Investigation report dated November 15, 1993	21, 49(b)	Disclosed in part
M189-M209	Memorandum and report dated July 9, 1993	21, 49(b)	Disclosed in part
M210-M211	Letter dated December 7, 1993	21, 49(b)	Disclosed
M212-M213	Memorandum dated September 27, 1993 and attached letter dated September 10, 1993	21, 49(b)	Disclosed
M214-M216	ERO Job Description	21, 49(b)	Disclosed
M217 and M218	Memoranda dated July 2, 1993 and June 28, 1993	21, 49(b)	Disclosed in part
M219 and M220	Memoranda dated May 5, 1993 and June 1, 1993	21, 49(b)	Disclosed
M221-M222	Correspondence dated April 28 and 29, 1993	21, 49(b)	Disclosed
M223-M227	Appellant's request dated February 25, 1993 and responses	21, 49(b)	Disclosed
M228-M229	Internal memoranda dated February 23 and 25, 1993	21, 49(b)	Disclosed
M230-M234	Correspondence dated February 4, 1993	21, 49(b)	Disclosed
M235	Memorandum dated January 19, 1993	21, 49(b)	Disclosed
M236-M238	Correspondence between MTHA and appellant's doctor	21, 49(b)	Disclosed
M239-M244	Summary of events dated December 17, 1992	21, 49(b)	Disclosed in part
M247-M249	Duplicate of M225-M227	21, 49(b)	Disclosed
M250-M257	Original complaint by appellant	21, 49(b)	Disclosed
O101-O116	Correspondence relating to another	21	Not Disclosed

PAGENUMBER	DESCRIPTION OF RECORD	EXEMPTION CLAIMED	DISPOSITION
	individual		