



Information and Privacy
Commissioner/Ontario

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

ORDER P-881

Appeal P-9400257

Ontario Human Rights Commission



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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 appellant has requested copies of all records relating to himself, including files and correspondence, from the Ontario Human Rights Commission (the OHRC). The appellant had previously filed several complaints with the OHRC.

The OHRC identified two investigation files relating to the appellant and denied access to the information in them based on the following exemptions:

- law enforcement - sections 14(1)(a) and (b), and 14(2)(a)
- invasion of privacy - section 21(1)
- advice or recommendations - section 13(1).

In appealing the OHRC's decision, the appellant indicated that the OHRC had only identified two investigations, whereas he had made four complaints. He, therefore, raised the adequacy of the search conducted by the OHRC for records responsive to his request.

The issues in this appeal are whether the exemptions which have been claimed apply to the records at issue, and whether the OHRC conducted a reasonable search for records.

A Notice of Inquiry was provided to the appellant and the OHRC. Because the records appeared to contain the appellant's own personal information, and some records also appeared to contain the personal information of other individuals, the Notice of Inquiry raised the possible application of sections 49(a) and (b) of the Act.

Representations were received from both parties. The OHRC's representations include the sworn affidavits of the Acting Freedom of Information and Privacy Co-ordinator (the Co-ordinator) and the Human Rights Officer (the Officer) involved in the investigation of the appellant's complaints. Following the receipt of representations, the OHRC agreed to disclose a number of records to the appellant. Those records are, therefore, not at issue in this appeal. Further, the OHRC did not provide representations regarding the discretionary exemption in section 14(2)(a), and I will not consider this section further in this order.

The remaining records consist of letters, memoranda and notes, administrative forms and investigation notes. The records remaining at issue and the exemption(s) claimed for each are more particularly described in Appendix "A" to this order. For ease of reference, Appendix "A" assigns consecutive numbers to the records at issue. The second column of Appendix "A" provides a cross-reference to the page numbers assigned by the OHRC.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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 reviewed the records at issue. I find that each of them contains the appellant's personal information, which is linked to the appellant by direct identification, or because the information is directly connected to his complaints. Some of the records also contain the personal information of individuals other than 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 provides a number of exceptions to this general right of access.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Under section 49(a) of the Act, the OHRC has the discretion to deny access to records which contain an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include both of the exemptions claimed with respect to the records at issue, namely law enforcement (section 14) and advice or recommendations (section 13). In the discussion which follows, I will consider whether the records qualify for exemption under these sections as a preliminary step in determining whether the exemption in section 49(a) applies.

LAW ENFORCEMENT

Sections 14(1)(a) and (b)

The OHRC has claimed these exemptions for all the records at issue.

In order for a record to qualify for exemption under either of these sections, the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act (Order P-324). It has been previously established that OHRC investigations meet this definition (in Order 89 and many subsequent orders) and I adopt this finding for the purposes of this order.

The purpose of sections 14(1)(a) and (b) is to provide the institution with the discretion to preclude access to records in circumstances where disclosure would interfere with an ongoing law enforcement matter or investigation (Order P-403).

Previous orders have found that in order to qualify for exemption under these sections, the OHRC must establish "a clear and direct linkage" between the disclosure of the specific information at issue and the harm mentioned in the exemption (Order M-202).

I have carefully reviewed the records at issue and have considered the representations of both parties. In its representations, the OHRC indicates that both files are in active case processing at the reconsideration stage. I am satisfied that the following records qualify for exemption under sections 14(1)(a) and (b): 1, 3, 6-13, 16, 18, 20, 22, 24-30, 34, 39, 43-47, 51, 55-58, 60, 62, 64-66 and 68. Accordingly, these records are all exempt from disclosure under section 49(a).

With respect to the remaining records, however, I am of the view that the OHRC has failed to meet the standard established in Order M-202. For this reason, none of the remaining records qualifies for exemption under these sections.

ADVICE OR RECOMMENDATIONS

Section 13(1) of the Act states that:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

In Order 94, former Commissioner Sidney B. Linden commented on the scope of this exemption. He stated that it "...purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making and policy-making."

The OHRC relies on this exemption with respect to Records 4, 5, 8, 10, 12, 13, 16, 20, 29-33, 35, 42, 46, 47, 53. I have already found that Records 8, 10, 12, 13, 16, 20, 29, 30, 46 and 47 are exempt under section 49(a), in the discussion of "Law Enforcement", above, and accordingly, I will not consider them in this discussion.

I find that Records 42 and 53 qualify for exemption under this section because they set out a suggested course of action with respect to the OHRC's decision-making mandate as established in the Ontario Human Rights Code.

In my view, Records 5, 31 and 35 contain only statistical information, and Records 4, 32 and 33 do not contain advice or recommendations. Accordingly, I find that these records do not qualify for exemption under section 13(1). As no other exemptions apply to these records, they should be disclosed to the appellant.

To summarize, I have found that Records 42 and 53 qualify for exemption under section 13(1), and are therefore exempt under section 49(a) of the Act.

INVASION OF PRIVACY

The OHRC has claimed that the exemption provided by section 21(1) applies to Records 1, 7-10, 12, 18-20, 23, 24, 34, 38, 39 and 66. I have found that all of these records are exempt under section 49(a), with the exception of Records 19, 23 and 38. Accordingly, I will limit my discussion in this part to these three records.

Record 19 is a facsimile cover sheet from the Respondent's counsel and Records 23 and 38 are postal receipts indicating that correspondence was mailed to various individuals, including the Respondent's counsel. In my view, the information in these records relates to the identified individuals in their employment capacity. Previous orders have held that information about an employee does not constitute that individual's personal information where the information relates to the individual's employment responsibilities or position. I find this to be the case in this appeal. As these records do not contain personal information of individuals other than the appellant, sections 21 and 49(b) cannot apply to them. As I have found that no

other exemptions apply to these records, they should be disclosed to the appellant.

REASONABLENESS OF SEARCH

As I indicated above, the appellant states that although he brought four different complaints before the OHRC, the records refer to only two complaint files. He indicates that when he made the additional complaints, the Officer made notes. He believes, therefore, that additional files should exist which contain documentation on the investigation of the additional complaints.

The Act does not require the OHRC to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act the OHRC must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request.

The OHRC's representations indicate that information relating to the two additional complaints made by the appellant does exist and has been incorporated into the other two complaint files that had already been opened. In his affidavit, the Officer acknowledges that the additional two complaints were initiated by the appellant. He confirms that the OHRC had opened only two complaint files and that the additional complaints were incorporated into these two files.

The OHRC's representations state further that similar complaints had been received from other individuals at the same time as the appellant's complaint. In his affidavit, the Co-ordinator states that he reviewed the documentation in these other complaint files and confirms that they contain the same type of information that had been placed in the appellant's files.

Finally, the OHRC indicates that a computer search using the appellant's name was conducted. This search produced only the two files which are at issue in this appeal.

I have carefully reviewed the representations of the parties and the affidavits submitted by the OHRC. I am satisfied that although separate complaint files were not opened in response to the appellant's additional complaints, the information pertaining to them exists and is located in the records which the OHRC has already identified as responsive in this appeal. Accordingly, I am satisfied that the OHRC's search for records was reasonable in the circumstances of this appeal.

ORDER:

1. I order the OHRC to disclose the following records to the appellant within fifteen (15) days after the date of this order: Records 2, 4, 5, 14, 15, 17, 19, 21, 23, 31-33, 35-38, 40, 41, 48-50, 52, 54, 59, 61, 63, 67 and 69-71.
2. In all other respects, I uphold the OHRC's decision.
3. In order to verify compliance with Provision 1 of this order, I reserve the right to require the OHRC to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley

February 28, 1995

Inquiry Officer

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER(S)	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
INVESTIGATION FILE 30-382Q				
1	14-16 36	Officer's notes	14(1)(a)(b) 21(3)(b)	Do not disclose
2	17	Letter to the appellant from his employer - January 14/91	14(1)(a)(b)	Disclose
3	18 60-64 153-158	Officer's notes	14(1)(a)(b)	Do not disclose
4	21	Record of intake	14(1)(a)(b) 13(1)	Disclose
5	22	Case opening form	14(1)(a)(b) 13(1)	Disclose
6	25	OHRC Questionnaire Form (2 - questions). This is required to be filled out by the appellant when in receipt of a complaint	14(1)(a)(b)	Do not disclose
7	31-35	Five letters to or from Respondent's counsel - February/91	14(1)(a)(b) 21(3)	Do not disclose
8	37	Letter from Respondent's counsel - April 22/91	14(1)(a)(b) 13(1) 21(3)(b)	Do not disclose
9	38-40 42-43	Respondent's questionnaire - April 25/91	14(1)(a)(b) 21(3)(b)	Do not disclose
10	44-45	Letter from Respondent's counsel - April 26/91	14(1)(a)(b) 13(1) 21(3)(b)	Do not disclose

RECORD NUMBER(S)	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
11	47	Letter from OHRC to Respondent's counsel - May 1/91	14(1)(a)(b)	Do not disclose
12	48-55 68-76 118-119 (duplicates of 125-126) 136-138	Officer's notes	14(1)(a)(b) 13(1) 21(3)(b)	Do not disclose
13	57, 142	Officer's notes	14(1)(a)(b) 13(1)	Do not disclose
14	66-67	Letter from OHRC to appellant with attachment - January 7/92	14(1)(a)(b)	Disclose
15	89	Facsimile transmittal sheet Dated January 9/92	14(1)(a)(b)	Disclose
16	116	Letter from OHRC to Respondent's counsel - February 21/92	14(1)(a)(b) 13(1)	Do not disclose
17	117	Facsimile transmittal sheet Dated February 21/92	14(1)(a)(b)	Disclose
18	120-121 (duplicates of 127-128, 130-131 and 270-271)	Letter from Respondent March 24/92	14(1)(a)(b) 21(3)(b)	Do not disclose
19	122 (duplicate of 129)	Facsimile cover sheet Dated March 24/92	14(1)(a)(b) 21(3)(b)	Disclose
20	123-124	Record of investigation	14(1)(a)(b) 14(2)(a) 21(3)(b) 13(1)	Do not disclose
21	143-144	Memorandum from Officer to Northern Manager - June 5/92	14(1)(a)(b)	Disclose

RECORD NUMBER(S)	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
22	163	Record of investigation	14(1)(a)(b) 14(2)(a)	Do not disclose
23	163a	Postal receipts dated July 22/93 and July 27/93	14(1)(a)(b) 21	Disclose
24	164	Letter from OHRC to Respondent's counsel - July 19/93	14(1)(a)(b) 21	Disclose
25	166	Officer's notes	14(1)(a)(b) 14(2)(a)	Do not disclose
26	167	Letter from Respondent's counsel - July 27/93	14(1)(a)(b) 14(2)(a)	Do not disclose
27	170 (duplicate of 250)	Draft decision (no date)	14(1)(a)(b) 14(2)(a)	Do not disclose
28	171-172 (duplicate of 251-252)	Officer's/Supervisor's response to parties submissions (disclosure) (no date)	14(1)(a)(b) 14(2)(a)	Do not disclose
29	222 (duplicate of 288)	Case disposition sheet	14(1)(a)(b) 13(1)	Do not disclose
30	223-224 (duplicate of 248-249)	Case plan	14(1)(a)(b) 14(2)(a) 13(1)	Do not disclose
31	225-226	226 - Compliance Unit File Tracking Form. Info. regarding complainant 225 - Head Office Information Sheet outlining the names and addresses of complainants and respondents	14(1)(a)(b) 13(1)	Disclose
32	227	Case co-ordinator's memo - September 1/93	14(1)(a)(b) 13(1)	Disclose
33	229	Facsimile transmittal sheet - October 19/93	14(1)(a)(b) 13(1)	Disclose

RECORD NUMBER(S)	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
34	265-276	Six letters from Respondent's counsel to OHRC 265 - January 4/93 266 - December 18/92 268 - October 19/92 269 - July 3/92 271 - March 24/92 276 - August 24/93	14(1)(a)(b) 21(3)(b)	Do not disclose
35	294-295	294 - OHRC Case Closing Statistical Data Form 295 - OHRC Systems A.D.P./Masterfile Form	14(1)(a)(b) 13(1)	Disclose
36	304	Facsimile transmittal sheet - February 10/94	14(1)(a)(b)	Disclose
37	306	Facsimile transmittal sheet - February 10/94	14(1)(a)(b)	Disclose
38	309a	Postal receipt - March 22/94	14(1)(a)(b) 21	Disclose
39	310-311 (duplicate of 312-313)	Letter from Respondent's counsel - March 18/94	14(1)(a)(b) 21	Do not disclose
INVESTIGATION FILE 30-394Q				
40	6-7	Caseload database	14(1)(a)(b)	Disclose
41	8-9	Case Closing Statistical Data administrative forms	14(1)(a)(b)	Disclose
42	10	Case disposition sheet	14(1)(a)(b) 13(1)	Do not disclose
43	22-26	Letter from Respondent's counsel - August 24/93	14(1)(a)(b)	Do not disclose
44	27-33	Five Letters to or from Respondent's counsel 27 - March 24/92	14(1)(a)(b)	Do not disclose

RECORD NUMBER(S)	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
		29 - July 3/93 30 - October 19/92 32 - December 18/92 33 - January 4/93		
45	45	Officer's/Supervisor's Response to Parties' Submissions (Disclosure) Form Officers notes	14(1)(a)(b)	Do not disclose
46	46	Draft decision (no date)	14(1)(a)(b) 13(1)	Do not disclose
47	49-50	Case plan	14(1)(a)(b) 13(1)	Do not disclose
48	51	Postal receipt - July 22/93	14(1)(a)(b)	Disclose
49	52	Memorandum	14(1)(a)(b)	Disclose
50	53	Postal receipt - July 22/93	14(1)(a)(b)	Disclose
51	54-56 127 129-130 137-138 149-151 155-156 158	Officer's notes	14(1)(a)(b)	Do not disclose
52	57	Information sheet	14(1)(a)(b)	Disclose
53	58	Case disposition sheet	14(1)(a)(b) 13(1)	Do not disclose
54	68	File tracking sheet	14(1)(a)(b)	Disclose
55	69-80	Five letters to or from Respondent's counsel	14(1)(a)(b)	Do not disclose
56	123	Letter from Respondent's counsel - July 27/93	14(1)(a)(b)	Do not disclose
57	124-126	Record of investigation	14(1)(a)(b)	Do not disclose

RECORD NUMBER(S)	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
			14(2)(a)	
58	128	Letter to OHRC from appellant's employer - March 22/93	14(1)(a)(b)	Do not disclose
59	139	Facsimile transmission coverpage February 9/93	14(1)(a)(b)	Disclose
60	144	Letter from Respondent's counsel - January 4/93	14(1)(a)(b)	Do not disclose
61	145	Facsimile transmission sheets 04/01/93 - April 1/93	14(1)(a)(b)	Disclose
62	146 148	Letters between OHRC and Respondent's counsel - January 4/93 and December 18/92	14(1)(a)(b)	Do not disclose
63	147	Letter from OHRC to appellant - December 18/92	14(1)(a)(b)	Disclose
64	153-154 157	Officer's notes	14(1)(a)(b)	Do not disclose
65	159-160	Letter from Respondent's counsel - July 3/92	14(1)(a)(b)	Do not disclose
66	161-162 164-165	Officer's notes	14(1)(a)(b) 21(3)(b)	Do not disclose
67	163	Newspaper clipping	14(1)(a)(b)	Disclose
68	171	Questions to respondents	14(1)(a)(b)	Do not disclose
69	172-174	172 - Case Opening Statistical Data Form 173 - Systems & A.D.P. Masterfile Form 174 - Systems & A.D.P. Cross Reference Form	14(1)(a)(b)	Disclose
70	175	Record of intake	14(1)(a)(b) 14(2)(a)	Disclose

RECORD NUMBER(S)	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
71	178-188	Research paper	14(1)(a)(b)	Disclose