



Information and Privacy
Commissioner/Ontario

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

ORDER P-934

Appeal P-9400716

Ontario Hydro



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). Ontario Hydro (Hydro) received a request for access to a specific Human Rights Investigation Report and information relating to department files. Hydro disclosed all the information pertaining to the department files. Partial access was granted to the Human Rights Investigation Report. The requester appealed the decision to deny access to the remaining portions.

The Human Rights Investigation Report consists of 53 pages including a 21-page appendix. The appellant received access to page 6 and most of page 7 (issues to be addressed) and pages 30, 31 and 32 (recommendations and disposition). The remaining pages of the Human Rights Investigation Report withheld by Hydro comprise the record at issue in this appeal.

The record is the result of an internal investigation conducted by Hydro under its Human Rights and Complaints Resolution policy in effect in December 1990. The investigation was undertaken in response to a specific complaint of discrimination and harassment allegedly practised by named supervisory staff in a specified department.

Hydro relies on the following exemption to deny access to the record:

- invasion of privacy - section 21(1).

During mediation, the appellant indicated that he was not seeking access to the names or the personal information of any identifiable individuals contained in the record.

A Notice of Inquiry was sent to the appellant, Hydro and six affected persons referred to in the record (the complainant and five respondents). Representations were received from Hydro and five of the six affected persons.

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, including:

- the race or sex of the individual,
- the education, criminal or employment history of the individual,
- the personal opinions or views of the individual except where they relate to another individual,

- the views or opinions of another individual about 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.

As I have previously indicated, the appellant has stated that he is not seeking access to the personal information of other individuals (such as names and personal identifiers) contained in the record. Hydro maintains that all of the information in the record constitutes the personal information of other individuals. I must, therefore, determine which portions of the record contain the personal information of these other individuals.

I have carefully reviewed the record which is divided into two parts: (1) the investigation report which includes the complainant's allegations, respondents' positions, background information and investigation method, issues to be addressed, witness statements, conclusions, recommendations and disposition and (2) the appendix (pages A1-A21 of the record) which includes the specific complaints, evidence of the witnesses and responses pertaining to each of the respondents.

The record contains some references to certain individuals such as the investigator which, in my view, are related to their professional capacity and employment duties. Thus, I find that this information does not qualify as personal information.

I will now consider the remaining information. I find that in addition to the names of the individuals identified on each page of the record, portions of certain pages of the investigation report and all of the appendix also contain information that could identify these individuals and, therefore, constitutes their personal information. I find that this personal information relates to the complainant, the respondents and the witnesses. None of the personal information which I have identified in the record relates to the appellant.

I have also carefully reviewed the representations of Hydro and the affected parties in conjunction with the information in the record.

Two of the affected persons state that removing the names of individuals is not sufficient to ensure confidentiality and that individuals familiar with the incident would still be able to draw conclusions, perhaps incorrectly. One of the affected persons states that the investigation was "widely discussed at Hydro before, during and after the conclusion" and that removing the names of the affected persons would not ensure the privacy of those individuals.

Hydro submits that the majority of the information in the record comprises personal information and if this personal information was removed, the information that remains would not be responsive to the request. I do not agree. The request was clearly for access to the Human Rights Investigation Report in its entirety. The appellant later narrowed his request for access to the record, without the personal information of other

individuals. In my view, the record, with the personal information removed, is still responsive to the request. In addition, section 10(2) of the Act obliges Hydro to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt.

Hydro states that the subject matter of the record is sensitive and given that there was widespread knowledge of the investigation and the participants, removal of the personal identifiers would not be sufficient to protect the identity of the affected persons.

While I accept the above arguments for certain statements contained in the record, I do not accept it for others. I accept the arguments for all of the information in the appendix (pages A1 - A21 of the record). I have previously found that the information in the appendix qualifies as personal information and, in my view, it is not possible to remove it without violating the personal privacy of the identifiable individuals referred to therein. Therefore, the appendix must **not** be disclosed to the appellant.

I do not accept the parties' arguments for the remaining pages of the record. In the latter case, once the personal identifiers in the record are removed, the remaining information loses its character as personal information as the materials cannot be related to identifiable individuals.

In this order, I have highlighted those portions of the record which constitute the personal information of identifiable individuals and which, therefore, fall outside the scope of the appeal. These portions of the record must **not** be disclosed to the appellant.

In my view, the remaining portions of the record do not contain personal information. Because the invasion of privacy exemption only applies to exempt **personal information** from disclosure, it follows that this section is not applicable to this category of information. Putting the matter somewhat differently, the disclosure of portions of the record which do not, themselves, constitute personal information would not represent an unjustified invasion of privacy. Since Hydro has not claimed that any other exemption applies to this information, it should be disclosed to the appellant in accordance with the highlighted copy of the record provided to Hydro's Freedom of Information and Privacy Co-ordinator with a copy of this order.

ORDER:

1. I uphold Hydro's decision to deny access to the appendix in its entirety (pages A1 - A21 of the record) together with the portions of the record that **are highlighted** on the copy of the record which is being sent to Hydro's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order Hydro to disclose the record to the appellant **except** for the appendix (pages A1 - A21 of the record) and the portions of the record that are highlighted on the copy of the record which is being sent to Hydro's Freedom of Information and Privacy Co-ordinator with a copy of this order. The appendix (pages A1 - A21 of the record) and the highlighted portions must **not** be disclosed.
3. I order Hydro to disclose the portions of the record described in Provision 2, within thirty-five (35)

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days following the date of this order but not earlier than the thirtieth (30th) day after the date of this order.

4. In order to verify compliance with this order, I reserve the right to require Hydro to provide me with a copy of the record disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

Mumtaz Jiwan
Inquiry Officer

_____ May 31, 1995