



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

# **ORDER M-643**

**Appeal M\_9500349**

**Oshawa Public Utilities Commission**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant submitted a request to the Oshawa Public Utilities Commission (the P.U.C.). The request was for all information relating to hearings within the last 20 years at the Ontario Human Rights Commission (OHRC) which involved the P.U.C., a list of all personal expenses paid to the P.U.C. Commissioners during the last three year term, and all documents and expenses arising from an alleged assault.

The request was then narrowed to include only the terms of settlement relating to one specific OHRC case. The P.U.C. identified records responsive to the request, as narrowed, and denied access to the information under the following exemption in the Act:

- information published or available - section 15(a).

The appellant filed an appeal of the denial of access. In his appeal letter, the appellant also states that, in his view, additional responsive records should exist.

This office sent a Notice of Inquiry to the appellant and the P.U.C., inviting them to make representations concerning the issues in this appeal. Representations were received from the P.U.C. only.

The record at issue consists of the order issued by the OHRC's Board of Inquiry in the case referred to by the appellant. This record incorporates Minutes of Settlement.

The issues for me to decide in this order are whether the exemption in section 15(a) of the Act applies to this record, and whether the P.U.C.'s search for records was reasonable in the circumstances.

## **DISCUSSION:**

### **INFORMATION PUBLISHED OR AVAILABLE**

This exemption appears in section 15(a) of the Act. This section states:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public.

Order 123 and many subsequent orders have indicated that, whenever an institution relies on section 15(a), the institution has a duty to inform the requester of the specific location of the records or information in question. Where the institution does not discharge its responsibility to do so, the Commissioner or his delegate may order the institution to provide the appellant with information sufficient to identify the precise location of the records or information in question.

In this case, the P.U.C.'s representations indicate that the record is available from the OHRC, and that the appellant has been so advised. However, the OHRC advises that it does not, in fact, provide Board of Inquiry orders to the public upon request. Rather, they are provided to a law reporting service for inclusion in the Canadian Human Rights Reporter. This service is available in many law libraries. Only cases which, for some reason, are not included in that publication would be made available by the OHRC.

On this basis, I accept the P.U.C.'s claim that the record is publicly available. However, it appears that the information provided to the appellant by the P.U.C. may be erroneous. Therefore, I will order the P.U.C. to contact the OHRC, clarify the precise method by which the appellant can obtain access to the record, and communicate this information to the appellant.

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details about the records which he is seeking and the P.U.C. indicates that further records do not exist, it my responsibility to ensure that the P.U.C. has made a reasonable search to identify any records which are responsive to the request. The Act does not require the P.U.C. to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the P.U.C. must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The P.U.C.'s representations include an affidavit of the Board employee who searched for responsive records. The affidavit indicates that all files pertaining to the specified OHRC case in the P.U.C.'s possession were thoroughly reviewed. In my view, this represents a reasonable attempt to locate responsive records in the circumstances of this appeal. Moreover, I note that the appellant has not provided adequate information to support his position that additional records should exist.

Accordingly, I find that the P.U.C.'s search for responsive records was reasonable in the circumstances.

### **ORDER:**

1. I uphold the P.U.C.'s decision to deny access to the Order and Minutes of Settlement.
2. I order the P.U.C. to re-contact the OHRC to verify the manner in which the record at issue can be obtained by the appellant, and to send this information to the appellant in writing, within fifteen (15) days after the date of this order. I further order the P.U.C. to provide a copy of this correspondence to me, by sending the same to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1, within twenty (20) days after the date of this order.
3. The appellant's appeal on the issue of the existence of additional records is denied.

Original signed by: \_\_\_\_\_

John Higgins  
Inquiry Officer

\_\_\_\_\_ November 10, 1995