



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

ORDER P-981

Appeal P-9500304

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 Ontario Human Rights Commission (the OHRC) received a request for all records in relation to a letter of complaint received in October 1994. The requester was the subject of the complaint.

The OHRC located the responsive records, which are described in Appendix A to this order, and denied access to them based on the following exemptions contained in the Act:

- law enforcement - sections 14(1)(a) and (b)
- invasion of privacy - sections 21(1) and 49(b)
- discretion to refuse requester's own information - section 49(a)

The requester appealed this decision.

A Notice of Inquiry was provided to the appellant, the OHRC and five individuals whose interests may be affected by the outcome of this appeal (the affected persons). Representations were received from the OHRC only.

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 and I find that all of them contain the personal information of four of the affected persons as they directly identify these four individuals or because the information is directly connected to their complaints. In addition, I find that Records 3, 4, 6, 9, 11, 17, 18 and 20-26 contain the personal information of the appellant. Records 20 and 22 also contain the personal information of the fifth affected person.

LAW ENFORCEMENT AND DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

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.

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 the law enforcement exemptions claimed with respect to the records at issue, sections 14(1)(a) and (b). In the discussion which follows, I will consider whether the records qualify for exemption under sections 14(1)(a) and (b) as a preliminary step in determining whether the exemption in section 49(a) applies to Records 3, 4, 6, 9, 11, 17, 18 and 20-26.

LAW ENFORCEMENT

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

The OHRC has claimed these exemptions apply to 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). In Order 89 and many subsequent orders it has been established that OHRC's investigations satisfy the definition of a law enforcement investigation. I adopt this finding for the purposes of this order.

The purpose of sections 14(1)(a) and (b) is to provide the OHRC with the discretion to preclude access to records in circumstances where disclosure could reasonably be expected to interfere with an ongoing law enforcement matter or investigation.

The OHRC provides some background information regarding the creation of the records. Between the initial contact with a complainant and the registration of a formal complaint, there exists an intermediate step known as "early-settlement-initiative" (ESI). The records were generated and the appellant's request was received during this stage. Since that time, however, formal complaints have been registered and are currently the subject of an active and ongoing investigation which has not reached the "board of inquiry" or "reconsideration" stage.

The OHRC submits that records of this type are not disclosed to respondents until the matter has reached the board of inquiry stage. This is based on its standing investigation procedures, practices and policies. The OHRC submits that disclosure of the records would interfere with the ongoing investigation by supplanting the administrative discretion which the OHRC is called upon to exercise by its governing legislation and create uncertainty regarding the confidentiality of records at different stages of case proceedings.

Having carefully reviewed the records and the representations of the OHRC, I find that I have been provided with sufficient evidence to establish that disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter or investigation. Accordingly, all of the records qualify for exemption under sections 14(1)(a) and (b).

I have previously found that Records 3, 4, 6, 9, 11, 17, 18 and 20-26 contain the personal information of the appellant. As noted above, section 49(a) provides an exemption for records containing a requester's own personal information where certain other exemptions (including section 14) would otherwise apply. Having found that Records 3, 4, 6, 9, 11, 17, 18 and 20-26 qualify for exemption under section 14(1)(a) and (b), I find that these records are exempt under section 49(a).

ORDER:

I uphold the decision of the OHRC.

Original signed by: _____

Donald Hale
Inquiry Officer

August 25, 1995

APPENDIX A

INDEX OF RECORDS AT ISSUE

RECORD NUMBER	DESCRIPTION	NO. OF PAGES	DISPOSITION	EXEMPTIONS CLAIMED
1	Draft letter	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
2	"Action Memo" dated April 25, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
3	Handwritten note dated April 26, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
4	Handwritten note dated April 18, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
5	Letter dated March 31, 1995 with attachment	2	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
6	"Record of Intake"	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
7	Handwritten note dated April 5, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
8	Handwritten note dated March 30, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
9	Handwritten note dated March 27, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
10	Handwritten note dated March 20, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
11	"Action Memo" dated March 22, 1995	1	Access denied in	14(1)(a) and (b),

RECORD NUMBER	DESCRIPTION	NO. OF PAGES	DISPOSITION	EXEMPTIONS CLAIMED
			full	21(3)(b), 49(a) and (b)
12	"Action Memo" dated March 30, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
13	Letter dated February 22, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
14	Handwritten note dated February 21, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
15	Handwritten note dated February 13, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
16	Handwritten note dated February 8, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
17	Handwritten notes dated February 6, 1995	2	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
18	Handwritten note dated February 2, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
19	Handwritten note dated January 24, 1995	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
20	Letter dated November 2, 1994	2	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
21	Letter dated October 3, 1994 with attachment	3	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
22	Letter dated November 17, 1994	2	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
23	Written complaint dated November 1, 1994	1 (two-sided)	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
24	Written complaint dated November 1, 1994	1 (two-sided)	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
25	Written complaint dated November 1, 1994	1	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)
26	Written complaint dated November 1, 1994	1 (two-sided)	Access denied in full	14(1)(a) and (b), 21(3)(b), 49(a) and (b)