



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

# **ORDER P-1053**

**Appeal P-9500379**

**Ontario Human Rights 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:**

The Ontario Human Rights Commission (the OHRC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the investigation of the requester's complaint by a named employee of the OHRC. The OHRC located a two page record responsive to the request and denied access to it in its entirety, claiming the application of the following exemption contained in the Act:

- law enforcement - sections 14(1)(a) and (b)

The requester appealed the OHRC decision to deny access. Within the thirty-five day period set by the Commissioner's office for the claiming of additional exemptions, the OHRC indicated that it was also relying on the application of sections 14(2)(a) (law enforcement) and 21(1) (invasion of privacy) to deny access to the record.

A Notice of Inquiry was provided to the appellant, the OHRC and an individual whose rights may be affected by the disclosure of the record (the affected person). The Appeals Officer identified the possible application of sections 49(a) and (b) to the record and invited the parties to make representations pertaining to these exemptions as well. Submissions were received from the OHRC only. In its representations, the OHRC indicated its willingness to disclose to the appellant the entire record with the personal identifiers of individuals other than the appellant severed. Accordingly, the record which remains at issue is the severed version which was provided to me by the OHRC in its representations.

## **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 individual's name where it appears with other personal information relating to the individual.

I have reviewed the record to determine whether it contains personal information and, if so, to whom the personal information relates. I find that the record contains the personal information of the appellant and the affected person.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the OHRC determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the OHRC 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 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 23 of the Act applies to the personal information.

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

The OHRC submits that the personal information contained in the record which relates to the affected person was obtained and is identifiable as part of an investigation into a possible violation of the Ontario Human Rights Code and that its disclosure would create a presumed unjustified invasion of the personal privacy of the affected person under section 21(3)(b) of the Act, which reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

Following my review of the severed version of the record, I concur that the presumption described in section 21(3)(b) applies to this information. I have considered the possible application of section 21(4) of the Act and find that none of the personal information at issue falls within the scope of this section. In addition, the appellant has not raised the application of section 23 of the Act.

As the presumption in section 21(3)(b) applies to the severed information, I find that its disclosure would be an unjustified invasion of the personal privacy of the affected person. For this reason, the information is exempt under section 49(b) of the Act.

As I have found that the severed portions of the record are exempt under section 49(b), it is not necessary for me to address the application of sections 8(1)(a) and (b) and 8(2)(a) of the Act to the record.

### **ORDER:**

1. I uphold the OHRC's decision to deny access to those portions of the record which were severed on the copy of the record provided to me by the OHRC with its representations.
2. I order the OHRC to disclose to the requester the remaining portions of the record within twenty-one (21) days of the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the OHRC to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_ November 21, 1995  
Donald Hale  
Inquiry Officer