



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1169**

**Appeal P-9500400**

**Ministry of Municipal Affairs and Housing**



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## **NATURE OF THE APPEAL:**

The Ministry of Municipal Affairs and Housing (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the statements of 15 individuals interviewed during an investigation conducted by the Ministry. The witness statements relate to two complaints filed by the requester under the Ministry's Workplace Discrimination and Harassment Policy (WDHP) against two individuals (the respondents). The requester alleged that she received differential treatment from the respondents on the basis of race and/or colour.

The Ministry denied access to the records. The Ministry stated, however, that the investigation reports, when completed, would be forwarded to the requester shortly. The requester appealed the denial of access to the witness statements.

Subsequently, the Ministry released the two investigation reports to the appellant. Copies of the reports were also provided to this office.

The records at issue consist of 30 witness statements, interviews conducted with the two respondents and 16 other individuals (collectively referred to as "the affected persons") as part of the investigation into both complaints filed by the appellant. Some of these individuals were interviewed twice, i.e. in respect of both complaints. The records range in length from one page to 78 pages and are numbered R-1 to R-30. Records R-1 and R-2 relate to interviews conducted with the respondents. Records R-3 to R-30 relate to interviews conducted with witnesses for both complaints.

The Ministry denied access to the 30 interview statements on the basis that disclosure would constitute an unjustified invasion of personal privacy under sections 21(1) and 49(b) of the Act.

A Notice of Inquiry was provided by this office to the appellant, the Ministry and the affected persons. Representations were received from the Ministry, the appellant and nine affected persons (including both the respondents). One of the affected persons consented to the disclosure of that part of the statement that relates directly to the complaints. On that basis, I have highlighted the relevant portions of the record which should be disclosed to the appellant.

## **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 any identifying number assigned to that 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 information in the records and I find that it contains the personal information of the appellant and other identifiable individuals, including the affected persons.

The appellant has suggested that the names and personal identifiers of the affected persons be removed from the records prior to disclosure. The affected persons state that even with their

names removed, a knowledgeable person would be able to link the remaining information to the individuals to whom it relates.

I have reviewed the information in the records and in my view, when the names and personal identifiers of the affected persons are removed from the records, some portions of the records no longer contain the personal information of these individuals. I have highlighted these parts of the records which should be disclosed to the appellant.

I note also that with the names and personal identifiers of the affected persons removed from the records, there is some information that relates solely to the appellant. I have also highlighted this information which should be disclosed to the appellant.

Some of the information in the records appears in the context of employment or professional duties of certain identifiable individuals. In my view, this information cannot be characterized as the personal information of those individuals. I have identified this information by highlighting it on the records and it should be disclosed to the appellant.

Some pages of the records contain handwritten notes by the affected persons and each page of the records is also initialled by the affected persons. In some instances, the highlighted portions of the records appear quite close to the handwritten notes and/or initials. The handwritten notes and the initials are **not** to be disclosed to the appellant.

The remaining information in the records relates to the functions performed by the affected persons within specific departments. The records also contain personal information about the beliefs, opinions and behaviours of the co-workers of the appellant and the respondents. In my view, even with the names of the affected persons removed, a knowledgeable person would be able to link the remaining information to the individuals to whom it pertains. This is due to the nature of the information in the record, the small number of individuals involved and the particular positions held by some witnesses. For these reasons, I find that the remaining non-highlighted information, even with the names removed, can be linked by a knowledgeable individual to the affected persons and therefore, constitutes the personal information of both the appellant and the affected persons.

I will now consider whether disclosure of the remaining (non-highlighted) portions of the records would constitute an unjustified invasion of personal privacy.

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

Neither the Ministry nor the affected persons have raised any of the presumptions listed under section 21(3) of the Act. In my view, none of the presumptions in section 21(3) apply to the information in the records.

If none of the presumptions contained in section 21(3) apply, the Ministry 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 Ministry indicates that the considerations under sections 21(2)(f) and (h) of the Act, which favour non-disclosure, are relevant in the circumstances of this appeal. The affected persons all reiterate the concerns raised by the Ministry. The affected persons state that they were assured that the information that they supplied to the investigator would be held in confidence and in that context, they were encouraged to speak freely.

The affected persons also indicate that the information is highly sensitive and, had they known that it might be divulged, they would not have agreed to the interviews. The affected persons point out that the statements describe the inter-relationships of functions and individuals within a small department and therefore, even if the names were removed, the identity of the witnesses would be revealed from the remaining information.

The appellant states that she needs access to the information to ensure that the process was fair and that her complaint was properly investigated. The appellant states that she fails to understand the necessity of interviewing 30 individuals. As I have indicated previously, the Ministry's investigator interviewed the two respondents and 16 other individuals. Some of these individuals were interviewed in respect of both complaints launched by the appellant and therefore, a total of 30 interview statements were compiled.

Sections 21(2)(f) and (h) of the Act state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence.

With respect to section 21(2)(f), I agree that when an allegation of discrimination is made and investigated, it is reasonable for the persons directly involved to find the experience distressing. In my view, the information provided in direct response to the complaints is the most sensitive information in the record. Further, the information pertaining to the beliefs and behaviours of

the co-workers of the appellant and the respondents is also highly sensitive. Therefore, I find that section 21(2)(f) is a relevant consideration with respect to the information in the remaining portions of the record.

Both the Ministry and the affected persons submit that the information in the witness statements was supplied to the investigator in confidence. The Ministry adds that the element of confidentiality is critical in order to encourage parties to come forth and speak candidly in WDHP cases.

In my view, it is neither practical nor possible to guarantee complete confidentiality to each party during an internal investigation of an allegation of discrimination in the workplace. The Ministry's WDHP directive states clearly that information collected under this process remains confidential subject to the Act. However, in the circumstances of this case, I am prepared to accept that the information supplied by the affected persons to the investigator was done so in confidence. I find, therefore, that section 21(2)(h) is a relevant consideration.

The appellant has indirectly referred to her right to an adequate degree of disclosure, a factor which arises from the preamble to section 21(2), which requires consideration of "all the relevant circumstances". This factor which favours disclosure relates to the fairness of administrative processes and the need for a degree of disclosure to the parties which is consistent with the principles of natural justice (Order P-1014). I agree that a complainant has the right to know that his or her complaint was properly investigated, a right to know the process that was followed and a right to know and understand the finding that was made. Therefore, in the circumstances of this case, I find that an adequate degree of disclosure is a relevant consideration.

I have considered the remaining portions of the record together with the representations of the parties. I have found three factors that are relevant in the circumstances of this case: sections 21(2)(f) and (h) which weigh in favour of protection of privacy and an unlisted factor, adequate degree of disclosure, which weighs in favour of disclosure.

In the circumstances of this case, the appellant is aware that in response to her complaints, investigations under the WDHP were conducted and that 16 individuals were interviewed. The appellant received a full oral briefing from the investigator and was subsequently provided with both investigation reports in their entirety. These reports summarize the information obtained during the investigation and contain the investigator's findings. The investigator found no evidence to support the appellant's allegations of discrimination, based on race or colour, against the two respondents. I note that the investigation reports are comprehensive and include all the relevant information sought by the appellant.

I have weighed the relevant factors and given the situation that I have just described above, I find that the factors favouring protection of privacy are more compelling. I find that the information in the investigation reports together with the highlighted portions of the record which I have ordered disclosed do satisfy the principles of natural justice underlying the need for an adequate degree of disclosure. And therefore, I find that disclosure of the remaining portions of the record would constitute an unjustified invasion of personal privacy and is exempt under section 49(b) of the Act.

**ORDER:**

1. I uphold the Ministry's decision to deny access to the non-highlighted portions of the records.
2. I order the Ministry to disclose the remaining (**highlighted**) portions of the records as shown on the copy sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order, by sending them to the appellant by **May 28, 1996** but not earlier than **May 23, 1996**.
3. To verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records disclosed in accordance with Provision 2.

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

Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ April 23, 1996