



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

# **ORDER P-1293**

**Appeal P-9600312**

**Ministry of Consumer and Commercial Relations**



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/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Ministry of Consumer and Commercial Relations (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for a copy of a letter of complaint and the envelope in which it was enclosed, sent to the Ministry and handled by a named Ministry employee. The complaint contains allegations of improper activities by the requester, a real estate broker. The Ministry denied the requester access to the letter and envelope, claiming the application of the following exemptions contained in the Act:

- law enforcement - section 14(1)(d)
- unjustified invasion of privacy - section 21(1)

The requester (now the appellant) appealed the Ministry's decision.

The record at issue in this appeal consists of:

- (1) a one-page, unsigned, typewritten letter. In place of a signature, the author has indicated in handwriting that he/she wishes to remain anonymous, and
- (2) the envelope addressed to the Ministry which contained the letter. The Ministry's address on the envelope is handwritten. The envelope does not contain a return address but is post-marked.

This office sent a Notice of Inquiry to the appellant, the Ministry and another individual, who is referred to in the letter (the affected person). Because the record was submitted to the Ministry anonymously, its author could not be identified by either the Ministry or this office.

Because it appeared that the record might contain the personal information of the appellant as well as other individuals, the Notice of Inquiry also invited the parties to address the possible application of sections 49(a) (discretion to refuse requester's own information) and 49(b) (invasion of privacy) of the Act.

Written representations were received from the appellant and the Ministry.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. The letter which constitutes the record at issue in this appeal includes allegations about improper activities on the part of the appellant. Where information involves an examination of an individual's professional performance or an investigation into his or her conduct, these references are considered to be the individual's personal information [Orders P-1180, P-1262 and P-1263].

As the record contains allegations about the appellant's conduct, I find that it qualifies as his personal information within the meaning of section 2(1).

Section 47(1) of the Act gives an individual 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.

## **DISCRETION TO REFUSE REQUESTER'S OWN PERSONAL INFORMATION**

Under section 49(a), the Ministry has the discretion to deny access to records which contain an individual's own personal information where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include section 14 (law enforcement).

## **LAW ENFORCEMENT**

The Ministry denied access to the record under section 14(1)(d) of the Act which states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

In order for a record to qualify for exemption under section 14(1)(d), it must relate to a "law enforcement" matter, which is defined in section 2(1) of the Act as follows:

"law enforcement" means,

- (a) policing;
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The appellant's representations deal mainly with the substance of the complaint itself. He does not directly address the application of the exemptions to the record.

The Ministry describes the record as a complaint received by the Registrar, Real Estate and Business Brokers Act (the REBBA) which triggered an investigation by the Registrar of Real Estate and Business Brokers into the allegations contained therein. The Ministry outlines the scheme of the REBBA, including the fact that investigations and prosecutions, with concomitant penalties, may be undertaken against individuals whose business activities are regulated by the statute.

In Order P-701, Inquiry Officer Anita Fineberg found that investigations of the activities of real estate brokers under the REBBA qualify as "law enforcement" as described in section 2(1) of the

Act. I adopt this finding and agree that the record at issue in this appeal relates to a “law enforcement matter” within the meaning of the Act.

The Ministry submits that the disclosure of this document would reveal the identity of a confidential source of information with respect to a law enforcement matter and would disclose information furnished only by the confidential source. It explains that as a matter of policy and legal requirement (section 16 of the REBBA), the Registrar and the Ministry as a whole treat all complaints of alleged violations of that Act as confidential. It is clear from the record itself that the author wishes to remain anonymous and be treated as a confidential source of the information provided.

Based on the representations received and my review of the record, I find that I have been provided with sufficient evidence to conclude that the record qualifies for exemption under section 14(1)(d). I find, therefore, that the record is properly exempt under section 49(a) of the Act.

Because I have found that the record qualifies for exemption under sections 14(1)(d) and 49(a) of the Act, it is not necessary for me to address the possible application of sections 21(1) and 49(b).

**ORDER:**

I uphold the Ministry's decision to deny access to the record.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_  
November 15, 1996