



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1565

Appeal P-9800003

Ontario Human Rights Commission



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BACKGROUND:

In early 1997, the appellant submitted a request to the Ontario Human Rights Commission (the OHRC) under the Freedom of Information and Protection of Privacy Act (the Act) for a copy of all the records in the appellant's complaint file. The appellant asked the OHRC to transfer the contents of this file to the Ontario Teachers' Federation. The OHRC located three files of records, granted access in full to 1118 pages and denied access to 21 pages on the basis of several sections of the Act. In responding to the appellant's request, the OHRC provided her with an index of the records contained in the files. The appellant appealed the denial of access and Appeal P-9700040 was opened. I disposed of the issues in that appeal in Order P-1405 and upheld the OHRC's decision in part.

NATURE OF THE APPEAL:

The appellant subsequently submitted another request to the OHRC under the Act. This request was to view all records which were listed in an attached index (which she had received in response to her previous access request) relating to a complaint against the Metropolitan Separate School Board which she filed with the OHRC. In the OHRC's decision letter, it granted the appellant viewing access to the records contained in folders 1 and 2 as described in the index of records, however it was not willing to provide viewing access to the documents in folder 3.

The appellant appealed this decision.

During mediation, the OHRC did allow viewing access to folder 3, except for those records that were the subject of the previous appeal. As Order P-1405 stated that certain records could not be disclosed to the appellant, she was not able to view them in folder 3, and they are not at issue in this appeal.

Once the appellant had viewed the records in folder 3, she advised this office that records were missing. The OHRC indicated that it does not have any more records, other than what the appellant has already viewed.

The appellant appealed the OHRC's decision on the basis that more records should exist. In particular, she is seeking the following records:

1. Item #42 on the OHRC index, records 63, 66, 67 and 68;
2. Item #36 on the OHRC index, five pages are missing; and
3. A letter the appellant viewed dated October 17, 1995 from the respondent's counsel to an OHRC employee, refers to a telephone conversation between these two individuals, and that the OHRC employee had agreed to look into a particular matter. The appellant believes that there should be records relating to this conversation, and pertaining to the OHRC employee looking into the matter.

On April 6, 1998, this office provided a Notice of Inquiry to the appellant and the OHRC. On April 29, 1998, the OHRC wrote to the appellant to advise her that page 63 (in item #42) was

enclosed. The OHRC explained that this page was out of numerical sequence. The OHRC also enclosed a copy of the Record of Intake which shows that the package only contained 65 pages. The OHRC asserts that the index was incorrect in this regard.

With respect to item #36, the OHRC advised that this record consists of a one-page letter and fax cover sheet. The OHRC notes that the letter indicates that copies of the letter were sent to various parties but advises that those copies were not attached on file. The OHRC claims, therefore, that the number given on the index was a clerical error.

With respect to item three (referred to above), the OHRC confirmed to the appellant that all they had on file was the letter dated October 17, 1995 regarding this matter.

The appellant submitted her representations to this office on April 28, 1998 and has not advised whether the OHRC's subsequent response was sufficient. Therefore, I will consider this matter to be unresolved for the purposes of this order. Representations were received from the OHRC on May 6, 1998.

DISCUSSION:

REASONABLENESS OF SEARCH

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

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request.

In her representations, the appellant expresses concern about the manner in which her case with the OHRC was handled. She also refers to allegations which were made against her in correspondence between the OHRC employee and the respondent's counsel. She indicates that she was not even aware of these allegations until she made her access request. She believes that information is being withheld from her for some questionable purpose. In general, her representations focus on these concerns and not on the matter to be determined in this appeal, that is, on what basis she believes that these records should exist.

The OHRC advises that all documents relating to a complaint are kept together in a file folder (or box(es) depending on the size of the file). The OHRC indicates further that once a file has been closed, it is sent to its records centre. The OHRC confirms that files relating to a formal complaint are not destroyed.

The OHRC indicates that the records relating to this appeal were located in the records centre. It states that one box was retrieved from there, and that this box contained three file folders. The Registrar of the OHRC advised that she thoroughly reviewed the contents of each folder. In

addition, she contacted the officer who investigated the case to enquire if she was in possession of any documents relating to the case or if the documents were sent elsewhere. The officer confirmed that all records relating to the appellant's complaint were placed in the three file folders which were sent to the records centre. The Registrar also confirmed that the former Freedom of Information and Privacy Co-ordinator (who had processed the appellant's first access request) did not have possession of any records relating to the request.

The OHRC reiterate its explanation regarding items #36 and #42 (which I referred to above). With respect to notes of telephone conversations and other documentation relating to the October 17, 1995 letter, the OHRC confirms that the OHRC employee asked the respondent's lawyer to send a letter confirming the request for an extension. The OHRC advises, however, that it is the practice of many officers to ask the person who is requesting an extension to put the request in writing and this serves as a confirmation of the conversation. The OHRC asserts that this constitutes the record of the conversation and that no other record exists.

Following my review of the representations of the parties, I am satisfied that, in the circumstances, the search conducted by the Registrar was reasonable. Moreover, the Registrar's explanation for the clerical errors in the numbering of the records was also reasonable.

ORDER:

The OHRC's search for responsive records was reasonable and this appeal is dismissed.

Original signed by: _____
Laurel Cropley
Adjudicator
(formerly Inquiry Officer)

_____ May 14, 1998