



Information and Privacy  
Commissioner/Ontario

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

# **ORDER PO-1812**

Appeal PA-000210-1

Ontario Human Rights Commission



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## **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 an unsevered copy of the submissions dated January 5, 2000 made by the OHRC to the office of the Information and Privacy Commissioner/Ontario (the IPC). The submissions referred to in the request were made in the course of an appeal by the appellant to the IPC of a decision of the OHRC to deny him access to a record involving a complaint which the appellant had filed with the OHRC.

This appeal, designated as Appeal Number PA-990255-1 by the IPC, was resolved by Order PO-1787, dated May 18, 2000. In that decision, Adjudicator Holly Big Canoe upheld the OHRC's decision to deny the appellant access to the requested information, finding that it was properly exempt from disclosure under section 14(1)(e) of the Act. In the Inquiry stage of that appeal, Adjudicator Big Canoe solicited the representations of the OHRC by way of a Notice of Inquiry. The OHRC made submissions in response to the Notice and portions of those submissions, dated January 5, 2000, were shared with the appellant in order to assist him in making his own representations in response to the Notice of Inquiry provided to him.

However, Adjudicator Big Canoe determined that portions of the OHRC's January 5, 2000 representations, which now form the record at issue in this appeal, should not be disclosed to the appellant as to do so would reveal the contents of the record at issue in Appeal Number PA-990255-1. It must be noted that the information which was withheld from the January 5, 2000 submissions of the OHRC and that which was ultimately found to be exempt from disclosure in Order PO-1787 under section 14(1)(e) is substantially the same.

The OHRC denied access to the requested record, claiming the application of section 14(1)(e) to the information contained therein. The appellant appealed the decision to deny him access to the record. I provided a Notice of Inquiry to the appellant, soliciting his representations on the application of the exemptions in sections 14(1)(e) and 49(a) of the Act. The appellant has provided me with his representations. Because of the manner in which I will address the application of the exemptions below, it was not necessary for me to seek the representations of the OHRC.

The record at issue in the present appeal consists of the undisclosed portions of the OHRC's submissions in Appeal Number PA-990255-1 to the IPC dated January 5, 2000.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

"Personal information" is defined in section 2(1) of the Act. Only information which fits the definition can qualify for exemption under section 21. In Order 11, it was held that:

It is clear from the wording of the statute that the list of examples of personal information under subsection 2(1) is not exhaustive. This leaves it open for [the person who will be

making the decision in this appeal] to decide whether or not information contained in the records which does not fall under subsections (a) to (h) ... constitutes personal information. Based on my review of the subject record, I find that it contains the personal information of the appellant and that of another identifiable individual (the affected person). The record refers to this individual by name and includes additional personal information which relates to him/her (section 2(1)(h)). Again, I note that the record at issue in the appeal which gave rise to the decision in Order PO-1787, and the information contained in the record which is the subject of the present appeal, is similar in many respects. The affected person is identified by name and other personal information about this individual is also contained therein.

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/ENDANGER LIFE OR SAFETY**

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 discretion to deny access to an individual's own personal information in instances where the exemptions in sections 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. [my emphasis]

The OHRC claims that the record is exempt from disclosure pursuant to section 14(1)(e). Accordingly, I will consider section 14(1)(e) as a preliminary step in determining whether the records qualify for exemption under section 49(a) of the Act

Section 14(1)(e) of the Act reads:

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

endanger the life or physical safety of a law enforcement officer or any other person;

Section 14 of the Act requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason. An institution relying on the section 14 exemption bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm by virtue of section 53 of the Act.

[Order P-188]

The requirement in Order 188 that the expectation of harm must be "based on reason" means that there must be some logical connection between disclosure and the potential harm which the institution seeks to avoid by applying the exemption. [Order P-948]

*Section 14(1)(e)*

The words “could reasonably be expected to” appear in the preamble of section 14(1), as well as in several other exemptions under the Act dealing with a wide variety of anticipated “harms”. In the case of most of these exemptions, in order to establish that the particular harm in question “could reasonably be expected” to result from disclosure of a record, the party with the burden of proof must provide “detailed and convincing” evidence to establish a “reasonable expectation of probable harm” [see Order P-373, two court decisions on judicial review of that order in Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and Ontario (Minister of Labour) v. Big Canoe, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

In Ontario (Minister of Labour), the Court of Appeal for Ontario drew a distinction between the requirements for establishing “health or safety” harms under sections 14(1)(e) and 20, and harms under other exemptions. The court stated (at p. 6):

The expectation of harm must be reasonable, but it need not be probable. Section 14(1)(e) requires a determination of whether there is a reasonable basis for concluding that disclosure could be expected to endanger the life or physical safety of a person. In other words, the party resisting disclosure must demonstrate that the reasons for resisting disclosure is not a frivolous or exaggerated expectation of endangerment to safety . . . Where there is a reasonable basis for believing that a person’s safety will be endangered by disclosing a record, the holder of that record properly invokes [section 14(1)(e)] to refuse disclosure.

In my view, despite this distinction, the party with the burden of proof under section 14(1)(e) still must provide “detailed and convincing evidence” of a reasonable expectation of harm to discharge its burden. This evidence must demonstrate that there is a reasonable basis for believing that endangerment will result from disclosure or, in other words, that the reasons for resisting disclosure are not frivolous or exaggerated. [Order PO-1747]

The OHRC indicated in its decision letter to the appellant, dated June 5, 2000, that it intended to rely on the “detailed and convincing evidence” provided to Adjudicator Big Canoe in Order PO-1787 for the purposes of the present appeal. In that decision, the Adjudicator held that the OHRC and the lawyer involved in that appeal [the affected person in the present appeal] had “demonstrated that the reasons for resisting disclosure is not a frivolous or exaggerated expectation of endangerment to safety.” She went on to find that:

I am satisfied that there is a reasonable basis for believing that disclosure could reasonably be expected to endanger the lawyer’s personal safety, and I find that section 14(1)(e) applies.

In my discussion of “personal information” above, I noted that the information contained in the record at issue in this appeal was similar in character to that which was the subject of the record in Order PO-1787.

The disclosure of the record at issue in this appeal would serve to identify the affected person, as was the case in the earlier decision.

The appellant has made extensive representations in support of his claim that he does not pose a threat to anyone. He has provided me with several medical reports and has disclosed his age to further his argument that he is not capable of harming anyone and would not do so regardless.

I have reviewed the evidence tendered by the OHRC and the affected person in Appeal Number PA-990255-1 in support of their contention that the record at issue in that appeal is exempt from disclosure under section 14(1)(e). I adopt the findings of Adjudicator Big Canoe in Order PO-1787 with respect to the reasonableness of the OHRC and the affected person's concern for his/her safety. I am not persuaded by the evidence tendered by the appellant that I should find differently. Again, I reiterate that Adjudicator Big Canoe, in her decision concerning access to the OHRC's submissions in Appeal Number PA-990255-1 (which is the record at issue in this appeal), determined that only portions of the OHRC's representations should be made available to the appellant, due to concerns which she had about the confidentiality of the severed portions. In my view, that decision was reasonable and in keeping with her final decision in Order PO-1787 in which she held that information which would disclose the identity and extent of involvement of the affected person in the OHRC matter was exempt under section 14(1)(e).

I adopt those findings for the purposes of the present appeal and have determined that the record at issue in this appeal also qualifies for exemption under section 14(1)(e). The OHRC has made submissions with respect to its exercise of discretion under section 49(a) in its decision letter and subsequent correspondence filed with this office. I am satisfied that the OHRC exercised its discretion in a proper manner and will not disturb it on appeal. Because the record qualifies for exemption under section 14(1)(e), I find that it is properly exempt under section 49(a).

**ORDER:**

I uphold the OHRC's decision to deny access to the requested record.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
August 4, 2000