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

ORDER PO-2201

Appeal PA-020215-1

Ontario Human Rights Commission

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NATURE OF THE APPEAL:

The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ontario Human Rights Commission (the OHRC) for records relating to human rights complaints she had made on her own behalf and on behalf of her son.

The OHRC responded as follows:

> I have identified the responsive records . . . They fall into three general categories:
>
> 1. Records submitted by you in support of your complaint;
>
> 2. Records submitted by the respondents; and
>
> 3. Records generated by Commission staff.
>
> I am pleased to provide you with all of the records in the first category.
>
> I am also providing you with copies of documents under category 2 that relate exclusively to you including records that were already released to you during the case processing of complaints. Further included in this package are copies containing mixed personal information of [you] and other individuals, subject to reasonable severance. Those that relate to other identifiable individuals are being withheld since their disclosure would create a presumption of the unjustified invasion of their privacy under sections 21(3)(b) and 49(b) of the *Act*.
>
> Finally, in the third category, I am releasing all records that were already disclosed to you during case processing. However, I am withholding records that contain staff advice/recommendations that are exempt under section 13(1) of the *Act*; those containing personal information of identifiable individuals since these are exempt under sections 21(3)(b) and 49(a) of the *Act*; and those involving investigation techniques since they are exempt under section 14(1)(c)(d) of the *Act*.
>
> Where a record contains your personal information as well as exempt materials, attempts will be made to delete the exempt portions so the record can be released. However, should this be impracticable, then the whole record will be withheld.

The appellant then appealed the OHRC's decision to this office. In her letter of appeal, she stated:

> I am writing today to request an appeal of the decision of the [OHRC] not to permit [me] to view files . . . as it deprives [me] of [my] rights to make corrections to any incorrect records that may be contained within.

. . . . .

> [I] should be granted access to review and correct any information supplied by other identifiable individuals that are contained within any files.
>
> The OHRC refusal to grant access under section 14(1)(c)(d) . . . should not be used as a means of depriving [me] of [my] rights to correct any errors. Further it is in the [public's] interest how a government organization utilises its resources and performs its assigned duties, and should be held accountable for any misuses...
>
> [I have] raised concerns to the OHRC throughout its investigation regarding incorrect information it had received from third parties. The OHRC to [my] knowledge did nothing to verify or correct this oversight despite being informed of it by [me] and continued to rely on the misinformation.
>
> The OHRC should not be seen as conducting investigations behind closed doors and should be sharing information with the Parties rather than trying to hide information thereby creating an atmosphere of secrecy, and bias.
>
> Tribunals should be seen as transparent as they are quasi Courts, and to withhold, deny and deprive [me] of access to information regarding [myself] and a minor child could be seen as violating natural justice, human rights and democratic rights.
>
> Secret allegations or information provided by unknown third parties placed in [another person's] files without affording that individual an opportunity to reply, provide their version, or correct inaccuracies can be seen as violating natural justice, human rights and democratic rights.

Later, the OHRC wrote to the appellant advising that it was also relying on the exemption at section 19 (solicitor-client privilege) of the *Act* to withhold records.

The OHRC then wrote to counsel for the respondent in the OHRC complaint matters (a school board), and four affected persons, advising that the OHRC had received a request for records under the *Act*. The OHRC indicated that the records included interview notes with these four individuals and that the OHRC had made a preliminary decision to disclose them, with the exception of the portions containing the affected persons' names, addresses, telephone numbers, dates of birth and other identifying information. The OHRC sought the views of these affected parties on its preliminary decision.

Counsel for the school board and the four affected parties wrote back to the OHRC indicating that the affected parties agreed with the decision to disclose the records in severed form. The OHRC then decided to disclose them.

Subsequently, the OHRC wrote to the requester enclosing copies of records that the OHRC had decided to disclose. The OHRC also attached an index indicating which records were being withheld and the basis for this decision. The OHRC later sent a revised version of this index.

The OHRC later wrote to the appellant stating:

> . . . I am providing you with a revised decision letter in response to your request for access to records under the [*Act*].
>
> Please be advised that the [OHRC] will not be claiming an exemption under section 14(1) of the *Act* with respect to records [numbered] 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16. The [OHRC] will continue to claim the application of sections 13(1) and 49(a) of the *Act* to these records.
>
> The [OHRC] has also agreed to disclose record number 3 to you and a copy of this record has been attached to this letter.

Mediation was not successful in resolving the remaining issues in the appeal, and the matter was streamed to the adjudication stage of the process.

I sent a Notice of Inquiry setting out the issues in the appeal to the OHRC, which submitted representations in response. I then sent the Notice, together with a copy of the OHRC's representations, to the appellant, who submitted representations in response.

RECORDS:

The 19 records at issue in this appeal are described in the following table.

Record	Description	Withheld in full or released in part	Exemption claimed
1	Case Disposition form	Withheld in full	Sections 49(a)/13
2	Section 34 – File Tracking - Manager's Checklist form	Withheld in full	Sections 49(a)/13
4	Case Disposition & Chronology – Jurisdictional Closings form	Withheld in full	Sections 49(a)/13
5	Case Disposition & Chronology – Jurisdictional Closings form	Withheld in full	Sections 49(a)/13
6	Case Disposition & Chronology – Jurisdictional Closings form	Withheld in full	Sections 49(a)/13
7	Office of Reconsideration – Reconsideration Report form	Withheld in full	Sections 49(a)/13
8	Section 34 – File Tracking - Manager's Checklist form	Withheld in full	Sections 49(a)/13

9	Case Disposition – Jurisdictional Closings form	Withheld in full	Sections 49(a)/13
10	Case Disposition – Jurisdictional Closings form	Withheld in full	Sections 49(a)/13
11	Legal opinion	Withheld in full	Sections 49(a)/19
12	Office of Reconsideration – Reconsideration Report form	Withheld in full	Sections 49(a)/13
13	File Ready to be Sent Electronically to Registrar's Office (FFSI) form	Withheld in full	Sections 49(a)/13
14	Case Disposition & Chronology – Jurisdictional Closings form	Withheld in full	Sections 49(a)/13
15	Reconsideration recommendation form	Withheld in full	Sections 49(a)/13
16	Office of Reconsideration – Reconsideration Report form	Withheld in full	Sections 49(a)/13
17	Witness statement	Disclosed in part	Sections 49(b)/21
18	Witness statement	Disclosed in part	Sections 49(b)/21
19	Witness statement	Disclosed in part	Sections 49(b)/21
20	Witness statement	Disclosed in part	Sections 49(b)/21

DISCUSSION:

PARENT'S RIGHT OF ACCESS TO A CHILD'S INFORMATION

The first issue for me to decide is whether the appellant has a right of access to her son's personal information as if it were her own.

Section 66(c) of the *Act* reads:

> Any right or power conferred on an individual by this Act may be exercised,
>
> > where the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

The appellant's son is less than sixteen years of age, and the evidence before me indicates that she has lawful custody of him. Therefore, the appellant has a right of access to her son's personal information as if it were her own.

PERSONAL INFORMATION

The next issue for me to decide is whether the records contain personal information and, if so, to whom it relates. Under section 2(1) of the *Act*, the term "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The OHRC submits:

> Records 1, 2 and 8 contain the name of the appellant and/or the appellant's son's name . . . along with the name of the respondent and the grounds and social areas cited under the *Human Rights Code* . . . (hereinafter the *Code*) and this qualifies as the personal information of the appellant and her son.
>
> Record 4-7 and 11-16 contain the name of the appellant and/or the appellant's son and this qualifies as the personal information of the appellant and/or the appellant's son.
>
> Paragraphs 5 and 6 of page 2 of Record 11 contains the personal information of another individual, other than the appellant or her son, since these paragraphs refer to another complaint that was filed with the [OHRC] and these paragraphs refer to the name of the complainant and the respondent involved in this other complaint.
>
> Records 17-20 are witness statements which were completed by [OHRC] staff during the course of the investigation of the complaints and these records contain mixed personal information of the appellant and her son and of the witnesses.
>
> These Records contain the names of the appellant and her son, plus details of their interactions with the witnesses and this qualifies as the personal information of the appellant and her son.
>
> Record 17 also contains the name, phone number, date of birth and employment history of the witness, who was interviewed by [OHRC] staff, and thus this qualifies as the personal information of this witness.
>
> Records 18-20 contain the names, addresses, phone numbers, dates of birth and employment histories of the witnesses, who were interviewed by [OHRC] staff, and thus these Records qualify as the personal information of these witnesses.
>
> While it can be argued that the names of the witnesses in Records 17-20 could be categorized as "corporate information" in that the witnesses are identified in terms of their respective positions as employees of the corporate respondent, the [OHRC] maintains that these names are nevertheless part of the personal

> information of these witnesses since they are also linked with the witnesses' individual employment histories.

The appellant makes no specific submissions on this point.

All of the records at issue contain personal information of the appellant and/or her son, including detailed information about the nature of their human rights complaints and their interactions with various witnesses. I also agree with the OHRC that Records 17-20 contain the personal information of individual witnesses, including their names, home addresses, dates of birth and other details relating to their interaction with the appellant and her son.

The OHRC submits that Record 11 contains personal information relating to another individual who had filed an unrelated human rights complaint. The OHRC did not claim that Record 11 is exempt under the section 49(b) personal privacy exemption. However, for the reasons cited below, this record is exempt under section 49(a)/19, so I need not determine whether the OHRC may withhold portions of it pursuant to section 49(b), despite the fact that it was not claimed.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/SOLICITOR-CLIENT PRIVILEGE

Introduction

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Under section 49(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 12, 13, 14, 14.1, 14.2 15, 16, 17, 18, 19, 20, or 22 would apply to the disclosure of that information.

Here, the OHRC relies on section 49(a) in conjunction with section 19, the solicitor-client privilege exemption, to withhold Record 11.

Section 19 of the *Act* reads:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

Section 19 contains two branches. Branch 1 includes two common law privileges:

- solicitor-client communication privilege; and
- litigation privilege.

Branch 2 contains two analogous statutory privileges that apply in the context of Crown counsel giving legal advice or conducting litigation.

Here, the OHRC relies on solicitor-client communication privilege under both branches. The OHRC does not rely on litigation privilege under either branch. I will first consider the application of common law solicitor-client communication privilege under Branch 1.

Solicitor-client communication privilege under Branch 1

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.)].

The OHRC submits:

> Record 11 is a legal opinion which was drafted by counsel for the [OHRC] for the Registrar of the [OHRC]. Record 11 indicates that the counsel in question, in response to a request from the Registrar, reviewed the Reconsideration reports and the complaint files and provided an opinion as to whether she is in agreement with the recommendations contained in the reports. As such . . . Record 11 qualifies for the solicitor-client privilege exemption under section 19 of the *Act*.

The appellant submits:

> The claim for solicitor client [privilege] cannot be supported by the OHRC when in all probabilities the Solicitor in question may have been an employee of the OHRC and whose role would be to provide information and advise in general regarding the law and [its application] to cases before the OHRC.
>
> . . . [A] formal solicitor client relationship involving a direct retainer and fees paid to the Solicitor by the OHRC directly relating to [our] matters had not been entered in to; so a clear solicitor client relationship as referenced by the Supreme Court of Canada and what is accepted by the *Solicitors Act* had not been established so it has no bearings on the OHRC claim.

Record 11 is a legal opinion given by counsel employed by the OHRC to the OHRC Registrar concerning the disposition of three reconsideration matters. I am satisfied that this record constitutes a direct communication of a confidential nature between a lawyer and client made for the purpose of providing legal advice.

The appellant suggests that communication privilege cannot apply because the lawyer is an employee of the OHRC. In my view, whether the lawyer in question is employed "in house" or is retained as outside counsel is irrelevant to the determination of whether the privilege applies.

Many previous decisions have found that communication privilege applies, even where the lawyer is an employee of the institution [see, for example, Orders P-417, P-449, PO-2064; see also the recent decision of the Ontario Court of Appeal in *Pritchard v. Ontario (Human Rights Commission)* (2003), 63 O.R. (3rd) 97, leave to appeal granted [2003] S.C.C.A. No. 125, which held that legal opinions given in similar circumstances were subject to solicitor-client communication privilege].

To conclude, I find that Record 11 is exempt under section 49(a) in conjunction with section 19.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/ADVICE OR RECOMMENDATIONS

Introduction

The OHRC relies on section 13, the advice or recommendations exemption, in conjunction with section 49(a), to withhold Records 1, 2, 4-10 and 12-16.

The purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Orders 24, P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

"Advice" and "recommendations" have a similar meaning. In order to qualify as "advice or recommendations", the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-1894, PO-1993].

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

[Orders P-1037, P-1631, PO-2028]

Representations

The OHRC submits:

> Records 1, 2, 4-10 and 12-16 all contain recommendations, from [OHRC] staff to the Commissioners, with respect to the disposition of the complaints of the appellant and her son.

. . . . .

> During the course of processing a human rights complaint, [OHRC] staff are required to make certain recommendations to the Commissioners of the [OHRC], regarding the disposition of the cases assigned to them. The Records at issue contain staff recommendations regarding the disposition of the complaints at various stages of the [OHRC's] process.
>
> Section 34(1) of the *Code* provides the Commissioners with the discretion, in limited circumstances, to decide to "not deal with" a complaint. A section 34(1) decision may be requested by the respondent or through the initiation of staff at the [OHRC]. [OHRC] staff must review the complaint and make a recommendation to the Commissioners that the complaint either be "dealt with" or "not dealt with" pursuant to sub-section 34(1) of the *Code*.
>
> Upon the completion of an investigation, [OHRC] staff are required to summarize and analyze the evidence and make a recommendation as to whether there is sufficient evidence to refer the complaint to the Board of Inquiry under sub-section 36(1) of the *Code*.
>
> The Reconsideration process occurs after the Commissioners have decided to either "not deal" with a complaint under sub-section 34(1) of the *Code*, or to dismiss the complaint for lack of evidence under sub-section 36(2) of the *Code*. Upon completion of the reconsideration process, staff are required to recommend whether the Commissioners should "uphold" or "reverse" their original decisions, with respect to the disposition of the complaint, pursuant to section 37 of the *Code*.

The OHRC goes on to specify the advice given in each of the records at issue.

The OHRC explains that disclosure of the advice could reasonably be expected to inhibit the free flow of advice or recommendation to the government, because

> . . . [OHRC] staff would not feel free and open to express their minds in writing on specific issues if they were aware that their advice or recommendations were subject to possible public scrutiny . . . [T]he Commissioners of the [OHRC] must have the benefit of staff advice which is candid, direct and to the point.

Finally, the OHRC submits that Order P-363 is applicable in these circumstances:

> In Order P-363, Assistant Commissioner Tom Mitchinson found that portions of an OHRC case disposition form were exempt [from] disclosure under section 13(1) of the *Act* since they would reveal the advice of a public servant. The

> [OHRC] contends that similarly, Records 1, 2, 4-10 and 12-16 are exempt from disclosure since they also would reveal the advice of a public servant.

The appellant makes no specific submissions on the application of section 13 to the records.

Findings

I agree with the OHRC that in Order P-363, this office found that a record indicating OHRC staff advice to Commissioners as to how a specific case should be disposed of (in that case, whether or not it should refer a complaint to a Board of Inquiry (now the Human Rights Tribunal of Ontario)), was exempt, to the extent that it revealed the suggested course of action. I agree with the approach taken in Order P-363 (which was upheld in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.)). Accordingly, I find that any information in the records that reveals how the OHRC Commissioners should dispose of the appellant's case is exempt under section 49(a)/13. However, as in Order P-363, once this information is removed, the remaining information, which consists mainly of administrative matters such as dates on which certain steps were taken, and whether relevant documents are attached, does not qualify as "advice or recommendations" and is therefore not exempt under section 49(a)/13.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF OTHER INDIVIDUALS

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

Sections 21(1) to (4) provide guidance in determining whether the "unjustified invasion of personal privacy" threshold under section 49(b) is met.

In this case, the OHRC submits that disclosure of the names, home addresses and dates of birth of the four affected parties would constitute an unjustified invasion of their personal privacy. In addition, the OHRC takes the position that disclosing this identifying information would also reveal the affected parties' employment history, and would reveal information compiled in a law enforcement context, both circumstances where disclosure is presumed to constitute an unjustified invasion of personal privacy under sections 21(3)(b) and (d):

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

> (b) 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 continue the investigation;
>
> (d) relates to employment or educational history;

The OHRC also submits that revealing the identity of the witnesses would reveal "highly sensitive" and "confidential" personal information within the meaning of the factors weighing against disclosure in section 21(2)(f) and (h), which read:

> 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;

The appellant submits:

> . . . [T]he information requested [is] contained within [my] Personal files. The Individuals for the most part are known to [me] and provided information regarding [me] which at the time they were aware may have been communicated to [me] had the matter gone on to a Hearing. It is suggested that the information that was given voluntarily should be made available to [me] as the givers had knowledge of its potential future disclosure.

In my view, it is clear that, under section 21(3)(b), disclosure of the information would reveal information that was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the discrimination provisions of the *Human Rights Code*. This finding is consistent with previous decisions of this office in similar circumstances. For example, in Order PO-1858, Adjudicator Donald Hale stated:

> The records clearly indicate that the OHRC investigated the complaint raised by the appellant for the purpose of determining whether a violation of the [*Human Rights*] *Code* had been committed. In previous decisions of this office, it has been held that investigations undertaken by the OHRC pursuant to the provisions of the *Code* are "law enforcement" investigations for the purposes of section 21(3)(b) of the *Act* (Orders P-1167, P-449, P-507 and P-510). On this basis, I am satisfied that the disclosure of the personal information contained in each of the records would constitute a presumed unjustified invasion of personal privacy as this

> information was compiled and is identifiable as part of a law enforcement investigation.

The appellant takes the position that she knows "for the most part" the identity of the individual witnesses. In the circumstances, it is not clear to me whether or not she knows each of these individuals' identity; therefore, I am not in a position to negate the application of the personal privacy exemption and risk unjustifiably invading their personal privacy. In addition, the appellant suggests that because the witnesses provided their information "voluntarily", their information should not be withheld. Whether or not the information was provided voluntarily, the fact remains that this information is subject to a presumption under section 21(3) that cannot be overcome by one or any combination of listed or unlisted factors under section 21(2) of the *Act*.

Accordingly, the withheld portions of Records 17-20 qualify for exemption under section 49(b) in conjunction with section 21(3)(b) of the *Act*.

If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy. I will address the OHRC's exercise of discretion under both 49(a) and (b) below.

EXERCISE OF DISCRETION

Regarding its exercise of discretion under sections 49(a) and (b), the OHRC submits:

> [The OHRC] maintains that its exercise of discretion has been made in full appreciation of the facts of the case, and upon proper application of the principles of law. [The OHRC] further maintains that the decisions to apply the above discretionary exemptions were governed by the principles that information should be available to the public; that individuals should have access to their own personal information; that exemptions to access should be limited and specific; and that the Institution has considered the individual circumstances of the request.

The OHRC's statement regarding its exercise of discretion adequately sets out general discretion principles, but is lacking in specific details regarding the circumstances of this case. However, in light of the OHRC's representations as a whole, including the discussion of the various applicable factors under the personal privacy exemption, I am prepared to accept that the OHRC did in fact consider the particular circumstances of this case in deciding to rely on the 49(a) and (b) exemptions.

Accordingly, I uphold the OHRC's exercise of discretion under sections 49(a) and (b).

PUBLIC INTEREST IN DISCLOSURE

Section 23 of the *Act* reads:

> An exemption from disclosure of a record under sections **13**, 15, 17, 18, 20, **21** and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption [emphasis added].

Therefore, if section 23 is found to apply, it may override the application of section 49(a) in conjunction with section 13, and section 49(b) in conjunction with section 21. It cannot apply to override section 49(a) in conjunction with section 19.

In order for the section 23 "public interest override" to apply, two requirements must be met: there must be a compelling public interest in disclosure; and this compelling public interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused [1999] S.C.C.A. No. 134 (note)].

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions that have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information that has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption [Order P-1398, cited above].

The appellant submits:

> There is a Public interest in the disclosure of the records. Recently there has been an opening of the government regarding Institutional Racism. The first being, the admission that Racial Profiling exists in the Police force. This admission has opened the doors to the Courts committing to now viewing and dealing with black YOA at sentencing differently taking in to consideration the impact of the Racial Profiling and Institutional Racism.
>
> This is relevant in [my] matter because the institutional racism and profiling spreads deeply with the government and does not stop with the Courts or the Police.
>
> The OHRC had a case before it dealing with just such an allegation. It failed to address the issues instead dismissing the Claims without proper investigation as to the merits. It now attempts to hide its complicity by falling back on the [*Act*].

> The workings or not of the governmental departments are [the public's] concern and the effects of Racism generally is significantly of public interest within the Black Community and the Community in general.
>
> On March 31, 2003 the OHRC itself stepped forward to hold a meeting to discuss such incidences of Racism publicly and has pledged to work to deal with such allegations within the Government. It has however neglected to look within its own backyard and its management of Claims on Governmental Bodies.
>
> Parts of the subject matter [have] been discussed in a public forum during a School Board meeting and During Court Proceedings.
>
> The Courts are available to protect or serve the public interest. But without proper documentation or time limits expiration that avenue may not be open.
>
> I have no knowledge if any other information has been released to the public . . .
>
> There is a public interest in disclosure of the records if it helps the School Board and members of the Community to provide a better learning environment free from racial bias for Children to learn in. In later years to prevent the hostility and delinquency within black youths because of negative stereotyping and labelling within the School system.

For the most part, the appellant's representations on this issue are focussed on establishing that there exist very important and current issues of racism in our community, particularly with respect to how the government interacts with citizens. There is no doubt that this is true. However, the appellant has not persuaded me that disclosing *these particular records* could reasonably be expected to advance the public debate surrounding these issues. The appellant does not put me in a position where I may draw a connection between disclosure of the information and the public interest in addressing racism issues.

In my view, the appellant's interest in obtaining access to the records is essentially a private one. Given that the appellant will now be receiving more information than she had received from the OHRC, I find that the appellant has not established that there is a compelling public interest in disclosure of the remaining information.

ORDER:

I order the OHRC to disclose Records 1, 2, 4-10 and 12-16 to the appellant, in accordance with the highlighted copies of those records included with the OHRC's copy of this order, no later than **November 19, 2003**. To be clear, the OHRC should *not* disclose the highlighted portions.

Original signed by: October 29, 2003
David Goodis
Senior Adjudicator