



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2419

Appeal PA-040233-1

Ontario Human Rights Commission



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NATURE OF THE APPEAL:

The requester (now the appellant) submitted a request to the Ontario Human Rights Commission (the Commission) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the decisions made in complaints against a named university faculty (the faculty) under the *Human Rights Code, 1990* (the *Code*). The Commission issued a decision in which it provided the information requested in letter format for five complaints relating to the faculty. The Commission waived the fee for processing this request.

The requester then submitted a second letter clarifying her initial request. She stated in this letter that she is

requesting that all complaints [under the *Code*] made against [the faculty] that have been made between 1995 and the present be disclosed. That includes all complaints that were withdrawn, abandoned, successful, still open or settled prior to investigators recommendations.

This also includes all complaints that were made for any reason concerning a human rights violation. All active and inactive complaints are requested as are all complaints that are or could be considered reprisal complaints stemming from an original complaint but are joined together for any reason.

The type of human rights violation is requested. As well a copy of the decision is requested. If the complaint has been abandoned, closed or is still open information to that effect will be requested.

The Commission issued a second decision letter in which it provided the following information in the body of the letter regarding thirteen listed complaints that had been filed against the faculty: date filed, the grounds, the social area and the disposition of the complaint. The Commission denied access to the decisions made pursuant to section 21(1) (personal privacy) of the *Act*. In support of its section 21(1) exemption claim, the Commission cited the application of sections 21(2)(f) and (h) and 21(3)(a), (b), (c) and (h) of the *Act*.

The appellant appealed the Commission's decision.

During the mediation stage of the appeal process, the Commission released additional responsive information to the appellant, namely portions of minutes of Commission meetings regarding the disposition of human rights complaints that had been filed against the faculty, but denied access to other information. To explain this denial of access, the Commission issued a third decision letter outlining the details of its access decision. In its decision letter the Commission specified that it was denying access to the file numbers, names of complainants, specific details regarding the grounds cited in each complaint and specific details regarding the reasons for the decisions that were made in each case. The Commission also indicated that some of the information contained in these records concerns complaints against other institutions that is non-responsive to the appellant's request. The Commission denied access to this information. In support of its decision to deny access in part, the Commission again cited the application of section 21 and claimed the application of sections 21(2)(f) and (h) and 21(3)(a), (b), (c), (d) and (h). The Commission also included an Index of Records, which provided that it was also relying upon the

application of section 49(b) to deny access to the remaining responsive information. Section 21(1) is a mandatory exemption that may apply to a record containing the personal information of an individual other than the requester, and no personal information of the requester (in this case, the appellant). Section 49(b) is a discretionary exemption that may apply where a record contains the personal information of both the requester and another individual (or individuals) and disclosure would be an unjustified invasion of another individual's personal privacy. (Order M-352).

During mediation the appellant agreed that the parts of the records severed as non-responsive could be removed from the appeal. The appellant confirmed that she wished to proceed to inquiry on the denial of access to the remaining information.

During the course of reviewing this file to commence my inquiry I determined that there were nine discrete records listed in the Commission's Index as being at issue, specifically records 1, 2, 2b, 3, 4, 5, 6, 7 and 8. With respect to record 8, I note that the information contained in this record concerns the appellant only and that the information about the appellant has been released to her. The only information that has been withheld is non-responsive, and since the appellant has decided not to pursue access to non-responsive information, I have concluded that this record is no longer at issue in this appeal.

I commenced my inquiry by sending a Notice of Inquiry to the Commission seeking its representations on its denial of access to portions of eight records. The Commission submitted representations and agreed to share them in their entirety with the appellant.

I then sought representations from the appellant and provided the appellant with a copy of the Commission's representations in their entirety. The appellant submitted representations in which she agreed to restrict the scope of her request to disability-related decisions rendered by the Commission. The appellant also indicated that she wished to remove specific portions of the information at issue from the scope of her request, including the complainants' names, sex and race for all eight records and, in addition, in one record the dates the discrimination is alleged to have occurred and in another record the Commission file number assigned to the complaint and the complainant's educational history.

I then sought reply representations from the Commission regarding the appellant's narrowed request. The Commission submitted reply representations and agreed to release additional information to the appellant. In response to the appellant's narrowed request the Commission indicated that the information at issue in records 2, 3, 4, 6 and 7 is now non-responsive to the appellant's request, as this information does not relate to disability complaints. The Commission provided the appellant with a revised decision letter confirming its decision to release additional information, a copy of which was received by our office.

I then provided the appellant with an opportunity to respond to the Commission's reply representations. The appellant submitted sur-reply representations. The appellant confirmed that she is not interested in information regarding complaints involving racial issues and that she is only interested in information that addresses complaints involving disability issues.

As a consequence of the appellant's further narrowing of her request and the Commission's revised access decision I conclude that records 2, 3, 4, 6 and 7 are no longer at issue since they do not involve disability-related complaints and that record 2b is no longer at issue since the Commission has disclosed all of the information that is responsive to the appellant's narrowed request.

Accordingly, my order will be restricted to records 1 and 5, which deal with disability-related complaints of discrimination.

RECORDS:

Portions of records 1 and 5 remain at issue in this appeal. These records are comprised of "Commission Meeting Minutes" regarding the consideration and disposition of two human rights complaints brought against the named faculty involving disability issues.

DISCUSSION:

PERSONAL INFORMATION

What constitutes "personal information"?

In order to determine which sections of the *Act* may apply, it is necessary to determine whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,

- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if 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;

The parties' representations

The Commission submits that the records at issue contain the complainants' names and sex and their respective complaint file numbers. The Commission submits that while the names and sex of the complainants has been removed from the scope of the appeal, the complainants' file numbers could be used to trace their identity and, as a result, this information qualifies as their personal information. The Commission states further that it has granted access to information about a "relatively small number of complaints, that are all against the same respondent" and, as a result, the disclosure of "any specific identifying information could reasonably be expected to reveal the identity of the complainants."

The appellant appears to acknowledge that the complainants' name and sex constitutes their personal information. However, she emphasizes that she is not interested in personal information. She states that she is interested in information concerning how the faculty has handled disability related issues in the past with regard to accommodation. In any event, having agreed to remove the names and sex of the complainants from the scope of the appeal, she believes that the information remaining at issue does not constitute personal information.

Analysis and findings

The appellant has made a request for information pertaining to disability claims involving the faculty that have been investigated by the Commission. While I acknowledge the appellant's position that she is not interested in personal information and, to demonstrate this stance, has removed the complainants' names and sex from the scope of the appeal, I must nevertheless decide whether the records at issue contain personal information and, if so, to whom it relates.

I am satisfied that records 1 and 5 do contain the personal information of individuals other than the appellant within the meaning of section 2(1) of the *Act*. These records include the complainants' names, sex and Commission file numbers which have been assigned to the individuals' human rights complaints. I concur with the Commission that due to the relatively small number of complaints that have been filed against the faculty for disability-related issues,

it would be easy to extrapolate the identities of the complainants even if their names and sex are removed from the scope of the appeal. Accordingly, in my view, the information at issue in records 1 and 5 qualifies as the complainants' personal information, as defined in section 2(1)(h) of the *Act*. I also find that the records do not contain any personal information of the appellant. As explained above, in this situation, the "personal privacy" exemption that may apply is the mandatory exemption at section 21(1), rather than section 49(b).

INVASION OF PRIVACY

Having determined that the undisclosed information contained in the records is the personal information of individuals other than the appellant, the mandatory exemption at section 21(1) requires that the Commission refuse to disclose the information unless one of the exceptions to the exemption at sections 21(1)(a) through (f) applies. In my view, the only exception which could have any application in the present appeal is set out in section 21(1)(f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy within the meaning of section 21(1)(f). Section 21(2) provides criteria to consider in making this determination, section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure in section 21(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2). A section 21(3) presumption can be overcome, however, if the personal information at issue falls within the ambit of section 21(4) or if the "compelling public interest" override provision at section 23 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

The Commission takes the position that disclosure of the information in the records is presumed to constitute an unjustified invasion of privacy under the presumption in section 21(3)(b) of the *Act*, which states:

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

is 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 to continue the investigation.

The parties' representations

The Commission states that "the personal information [contained in the records] was compiled and is identifiable as part of an investigation into possible violations of the [*Code*]." In support of its position the Commission makes reference to Orders PO-1858 and PO-2201 issued by this office.

The appellant's representations do not address the application of the section 21(3)(b) presumption. Instead, the appellant focuses on her reasons for wanting this information. She states that she requires the information at issue to enable her to make "an informed choice" about how the faculty has handled "a particular disability related issue in the past with regard to accommodation". The appellant states that she would then hope to use this information to appeal her own "educational status" within the faculty.

Analysis and findings

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 *Code*, and I find that the presumption at section 21(3)(b) therefore applies. This finding is consistent with previous decisions of this office in similar circumstances (see Order P-363, P-449, P-507, P-510, P-1167, PO-1858 and PO-2201). For example, in Order PO-1858, Adjudicator Donald Hale stated:

The records clearly indicate that the [Commission] investigated the complaint raised by the appellant for the purpose of determining whether a violation of the *Code* had been committed. In previous decisions of this office, it has been held that investigations undertaken by the [Commission] 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.

I acknowledge that the appellant has stated that she is not interested in the complainants' personal information and that she is motivated by a desire to learn more about how the Commission has handled disability issues in the past involving the faculty in order to address her own status with the faculty. In my view, the Commission has gone to considerable lengths to provide the appellant with information that is of assistance to her while remaining mindful of its obligations under section 21(1). I am satisfied that the information that remains at issue was collected by the Commission during the course of its investigation and is, therefore, subject to

the presumption under section 21(3)(b). This presumption cannot be overcome by one or any combination of listed or unlisted factors under section 21(2) of the *Act*.

In the circumstances of this appeal, I find that the section 21(3)(b) presumption is not rebutted by section 21(4) or the “public interest override” at section 23, which was not raised in this case. The disclosure of the information at issue in records 1 and 5 therefore constitutes an unjustified invasion of personal privacy. The exception to the exemption at section 21(1)(f) therefore does not apply.

Since the information remaining at issue is the personal information of an individual other than the appellant and its disclosure would constitute an unjustified invasion of that individual’s personal privacy, I find that it is exempt under section 21(1) of the *Act*.

ORDER:

I uphold the Commission’s decision to deny access to the information remaining at issue in records 1 and 5.

Original Signed By: _____ September 29, 2005
Bernard Morrow
Adjudicator