



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2783

Appeal PA07-421, PA07-422, PA07-423 and PA07-424

Ontario Human Rights Commission



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NATURE OF THE APPEAL:

The following Order contains the disposition of four appeals.

Requests

The requesters submitted four requests to the Ontario Human Rights Commission (OHRC) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requesters are a married couple where the wife was the complainant before the OHRC. Three of the requests related to two complaint files and one intake file. All three of the requests stated the following:

My request pertains to access to Commission statistical records, Commission policies/practices and specific access to Complaint file [specified file number]. The following are specific information, documents, and records of concern.

- All records pertaining to correspondence between the writer and the commission staff;
- All records of conversations in the possession of commission staff that is not in the file;
- All dates, times and length of telephone conversations between the Commission staff and [appellant] from September 1, 2005 to present;
- All Commission staff written documentation on the telephone conversations;
- Personal assessment/reflections etc. made by Commission staff;
- All information in complaint file [specified file number] which access is permissible under the above statutes;
- Commission's policies and practices regarding requirements for Commission staff to document verbal inquiries, respond/return messages left for staff and the Intake-Inquiry Representative's authority to deny a complaint and not send out a complaint package; and
- Review of the Commission's records regarding complaints filed, complaints denied, the reason for the complaint being denied (e.g. the complainant was informed another statute would be the more appropriate statute to file a complaint under, etc.).

The requester's fourth request was for the following and does not relate to a particular OHRC file:

...access to Commission staff telephone communications/records and commission staff personal records maintained with respect to the following commission staff. The Commission staff had discussions regarding my request to file a complaint against [named organization] but was denied the right to file a complaint. Commission staff:

Receptionist – [named individual]
Inquiry Service Representative – [named individual]
Inquiry Service Representation – [named individual]
Manager, Inquiry and Intake Office – [named individual]

- All records regarding dates, times and length of telephone conversations between the Commission staff (named above) and [requester] from [specified time] to present
- All records of conversations in the possession of Commission staff that is not in the file
- All Commission staff written documentation on the telephone conversations;
- Personal assessment/reflections etc. made by Commission staff
- Commission policies and practices regarding requirements for Commission staff to document verbal inquiries, respond/return messages left for staff and the Intake-Inquiry Representative's authority to deny a complaint and not send out a complaint package; and
- Review of the Commission's records regarding complaints filed, complaints denied, the reason for the complaint being denied (e.g. the complainant was informed under another statute would be the more appropriate statute to file a complaint, etc...)

Decisions

In Request Number 1, the OHRC released a number of records and denied access to 12 records. Records 1 to 10 were denied in full, based on sections 14(1)(a) and (b) (law enforcement) in conjunction with section 49(a) of the *Act*. Records 11 and 12 were denied in part based on section 13(1) (advice or recommendation) in conjunction with section 49(a).

In Request Number 2, the OHRC granted partial access, releasing a number of records and denying access to 5 records. The OHRC withheld Records 1 and 2 in their entirety on the basis of sections 14(1)(a) and (b) (law enforcement) in conjunction with section 49(a) of the *Act*. It

withheld Records 3, 4 and 5 in part, on the basis of section 13(1) (advice or recommendation) in conjunction with section 49(a) of the *Act*.

In Request Number 3, the OHRC located two responsive records and disclosed the records in full to the appellant.

In Request Number 4, the OHRC informed the requester that there were no responsive records that contained telephone conversations between the requester and the named Commission staff, other than the records that had already been identified in the previous three requests.

Appeals

The requesters, now the appellants, appealed the OHRC's decision for all of the requests. As a result, the following four appeals were opened: **PA07-421, PA07-422, PA07-423 and PA07-424**. As the husband appellant is the spokesperson for him and his wife, I will refer to them as the appellant and the appellant's wife in the order below.

During mediation of appeals PA07-421, PA07-422 and PA07-423, the appellant submitted a correction request with attachments to the OHRC. The correction request consisted of a letter which referred to the two complaint files and the intake file. The appellant requested that each file be corrected and his letter and its attachments be included in each file. The OHRC denied the correction requests in each case and advised the appellant that he was entitled to request a Statement of Disagreement.

Also during mediation of appeal PA07-422, the OHRC released Records 1, 2 and 5 in full. Accordingly, these records are no longer at issue.

Mediation efforts did not resolve the appeals and they were all moved to the adjudication stage of the appeals process for me to conduct an inquiry. The following issues remain in dispute:

- Access to Records 1 – 10 in full (49(a) in conjunction with section 14(1)) and 11 and 12 in part (49(a) in conjunction with section 13(1))
- Access to Records 3 and 4 in part (49(a) in conjunction with section 13(1))
- Reasonable search
- Correction request

Initially, in all four appeals, I sent a Notice of Inquiry to the OHRC setting out the facts and issues on appeal. In each appeal, the OHRC provided representations in response.

In appeals PA07-421 and PA07-422 I provided the appellant a Notice of Inquiry with the non-confidential portions of the OHRC's representations. Portions of the representations were withheld due to my confidentiality concerns.

In appeals PA07-423 and PA07-424, the appellant was provided with a Notice of Inquiry and a complete copy of the OHRC's representations.

I received representations from the appellant in appeals PA07-421 and PA07-422 only. The appellant was contacted by this office in regards to his representations for appeals PA07-423 and PA07-424 but no representations were received.

Finally, in appeal PA07-422, I provided the OHRC with a complete copy of the appellant's representations and asked them to comment and make representations on the issues of correction and search. The OHRC provided representations in reply.

RECORDS:

In appeal PA07-421 there are 12 records at issue.

- Record 1 – Correspondence dated April 24, 2006
- Record 2 – Comment Sheet
- Record 3 – Case Assessment
- Record 4 – Email Correspondence
- Record 5 – Record of contact
- Record 6 – Record of contact
- Record 7 – Correspondence dated May 2, 2007
- Record 8 – Email correspondence
- Record 9 – Correspondence dated May 31, 2007
- Record 10 – Email correspondence
- Record 11 – File Ready to be sent to Registrar's Office Form
- Record 12 – File Closing form

In appeal PA07-422, the remaining records are at issue:

- Record 3 – Case Disposition and Chronology
- Record 4 – File Ready to be sent to Registrar's Office Form

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply in appeals PA07-421 and PA07-422, it is necessary to decide whether the record contains "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 where 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 list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

The OHRC submits in appeals PA07-421 and PA07-422 that the records at issue contain the appellant wife's personal information. The OHRC states in both cases that the information in the record consists of the appellant wife's name and file number assigned to the human rights complaint and qualifies as her personal information pursuant to subsections (c) and (h) of the section 2(1) definition of "personal information". Some of the records also refer to the appellant wife's medical and employment history and this information also qualifies as "personal information" for the purposes of section 2(1).

The appellant does not make representations on this issue.

From my review of the records, I find that Records 1 to 12 in appeal PA07-421 contain personal information relating to the appellant and the appellant's wife including the appellant and his wife's names, file number, and employment and medical information relating to the appellant's wife. I find that all of this information is personal information within the meaning of paragraphs (a), (c), (d) and (h) of the definition of that term in section 2(1) of the *Act*.

Similarly, Records 3 and 4 also contain personal information relating to the appellant and his wife including their names, file number and other information relating to the processing of their human rights complaint. This information is also personal information within the meaning of paragraphs (c), (d) and (h) of the definition of that term in section 2(1) of the *Act*.

The records do not contain the personal information of any individuals other than the appellant and his wife.

Since the records contain the personal information of the appellant and his wife, I will now consider whether the records at issue are exempt under section 49(a) in conjunction with sections 13 and 14.

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

Section 47(1) 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.

In this case, the institution relies on section 49(a) in conjunction with sections 13(1) and 14(1)(a) and (b). I will first address the application of section 13(1)

Section 13(1) states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

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-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario*

(Ministry of Transportation) v. Ontario (Information and Privacy Commissioner), [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563].

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 PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563]

The OHRC submits that Records 11 and 12 of appeal PA07-421 and Records 3 and 4 of PA07-422 contain advice or recommendation such that section 13(1) in conjunction with section 49(a) applies to exempt the records from disclosure.

The OHRC states that Records 3, 4, 11 and 12 contain a recommendation from OHRC staff to the OHRC Commissioners with respect to the disposition of the appellant wife's complaint. The OHRC further submits:

...disclosure of the advice or recommendation could reasonably be expected to inhibit the free flow of advice or recommendation to the government. This is for the reason that only the OHRC Commissioners have the authority to decide on the disposition of a human rights complaint, namely whether to close a complaint for lack of jurisdiction or for lack of evidence, or to refer it to the Human Rights Tribunal of Ontario. As a result, OHRC staff need to be able to free and frankly make recommendations to the OHRC Commissioners with respect to the disposition of a human rights complaint that they have processed.

The OHRC further relies on Orders P-363 and PO-2201 where this office found that similar information was exempt under section 13(1).

The appellant did not make representations on this issue.

In Order PO-2201, former Senior Adjudicator David Goodis dealt with similar records to those at issue here. Senior Adjudicator Goodis agreed with the OHRC that a record which would reveal OHRC staff advice to the Commissioners on how a case should be disposed of was exempt to the extent that the information disclosed would reveal the suggested course of action. The Senior Adjudicator also went on to find:

..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.

I agree with Senior Adjudicator Goodis’ approach and apply it here. Record 3 is a “Case Disposition & Chronology Jurisdictional Closings” form. Records 4 and 11 are both “Ready to be sent to Registrar’s Office” forms. Record 12 is a “File Closing Form”. Based on my review of the withheld portions of these records, I find that Records 3, 4, 11 and 12 contain a suggested course of action that will ultimately be accepted or rejected by the OHRC Commissioners. The actual recommended course of action is exempt from disclosure under section 49(a) and 13 as advice or recommendation subject to my finding on the exercise of discretion below. Section 13(2) contains a number of mandatory exceptions to the exemption in section 13(1) and from my review of the records I find that the exceptions do not apply in this appeal.

RIGHT OF ACCESS TO ONE’S OWN PERSONAL INFORMATION / LAW ENFORCEMENT

As stated above, under section 49(a), the OHRC 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.

The OHRC relies on section 49(a) in conjunction with section 14(1)(a) and (b) to deny access to the remaining records, namely Records 1 to 10.

Sections 14(1)(a) and (b) state:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

The term “law enforcement” is defined in section 2(1) 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)

Where section 14 uses the words “could reasonably be expected to”, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

The OHRC submits that past orders of this office have found that an OHRC investigation into a human rights complaint qualifies as a “law enforcement matter” within the meaning of section 14(1)(a). The OHRC submits that the law enforcement matter is the investigation into the appellant wife’s complaint allegations. The OHRC states that disclosure of Records 1 to 10 could reasonably be expected to interfere with the law enforcement matter because of the ongoing reconsideration process.

In regard to section 14(1)(b), the OHRC submits that disclosure of Records 1 to 10 would interfere with a specific, ongoing law enforcement investigation. The OHRC states:

...IPC Order 178 in which Assistant Commissioner Tom Wright found that “until either a board of inquiry (now the human rights tribunal) has been appointed or the reconsideration process has been completed, it is not possible to categorically state that the institution’s investigation has been completed.

...the complainant’s complaint is now at the Reconsideration stage of the OHRC’s case processing procedures and this stage may involve further investigation of the appellant’s allegations. Moreover, the OHRC’s reconsideration process may result in the OHRC Commissioners deciding to overturn their original decision to “not deal with” the complainant’s complaint and this would result in a further investigation of the complainant’s allegations against the respondent.

The appellant’s representations do not specifically address the application of the sections 14(1)(a) and (b) exemptions. Rather, the appellant submits that the records at issue are necessary for his wife to make her case before the OHRC and thus the section 14(1)(a) and (b) exemptions should not apply. The appellant states that the records contain information that he believes was a factor in the OHRC’s decision to not pursue his wife’s complaint. The appellant argues that the OHRC’s reliance on section 14(1)(a) and/or (b) prejudices the ability of his wife to make her case for her complaint.

In order for a record to qualify for exemption under either section 14(1)(a) or (b), the matter to which the record relates must first satisfy the definition of the term “law enforcement” found in section 2(1) of the *Act* (Order P-324). It has been previously established that OHRC investigations meet this definition (Order 89 and many subsequent orders) and I adopt this finding for the purposes of this order.

Furthermore, I find that proceedings before the Human Rights Tribunal are considered law enforcement proceedings with section 14(1)(b) and that until the Tribunal has rendered a decision or until the reconsideration process has been exhausted, the investigation is considered ongoing (Orders P-178 and P-507).

I have reviewed Records 1 to 10 and find that they contain information relating to the appellant’s case including information relating to the OHRC hearing, emails and recommendations made by OHRC staff, and emails and correspondence between the OHRC investigator and another party in the complaint. I am satisfied that all of the records contain specific information relating to the investigation of the appellant’s human rights complaint. Further, I agree with the OHRC that disclosure of this information would interfere with the law enforcement matter namely the investigation into the appellant wife’s human rights complaint. Additionally, I find that disclosure of Records 1 to 10 would also interfere with the OHRC’s investigation into the appellant wife’s human rights complaint. Accordingly, I find that Records 1 to 10 qualify for exemption under section 49(a) subject to my finding on the OHRC’s exercise of discretion.

EXERCISE OF DISCRETION

The section 49(a) exemption is discretionary and permits the OHRC to disclose information, despite the fact that it could be withheld. On appeal, this office may review the OHRC’s decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so (Orders PO-2129-F and MO-1629).

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

In support of its position that it exercised its discretion in a proper manner, the OHRC submits that it considered the factors that information should be made available to the public; that individuals should have a right of access to their own personal information; and, that exemptions from the right of access should be limited and specific.

The appellant did not make representations on this issue.

I am satisfied, based on the OHRC's representations and the circumstances of this appeal, that the OHRC properly exercised its discretion in refusing to disclose the records under section 49(a). The OHRC properly considered the section 13 and 14 exemptions and the various interests they seek to protect. Further, the OHRC considered its historic practice in dealing with similar information. The OHRC also considered the fact that the appellants were requesting their own personal information and the fact that exemptions from this right of access should be limited and specific.

REASONABLE SEARCH

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

In all four appeals, the appellant submits that the responsive records do not contain records of conversations he had with various OHRC staff members. In support of his position, the appellant provided a copy of a letter he sent to a Commissioner at the OHRC which details his conversations with OHRC staff members and attaches his notes to some of these conversations.

In appeal PA07-421, the appellant submits that the following records should exist:

- Discussions between the appellant and OHRC staff for October 4, 2006 and October 16, 2006
- Discussions between the appellant and OHRC staff for July 27, 2007
- Discussions between the appellant and OHRC staff for April 30, 2007

In appeal PA07-422, the appellant submits a record should exist that records a conversation between the appellant and OHRC staff for November 5, 2005.

In appeal PA07-423, the appellant submits that there is no record of conversations he had with OHRC staff on June 26, 2007 and July 3, 2007.

In appeal PA07-424, the appellant claims that there should be records of the conversations he had with OHRC staff.

The appellant also argues that the OHRC have policies that require its staff to make notes of their telephone conversations.

The OHRC was asked to provide a written summary of all steps taken in response to the request, in affidavit form. In this case, the OHRC provided the affidavit of the Compliance Officer of the OHRC whose responsibilities include the processing of access requests received by the OHRC under the *Act*. The Compliance Officer affirmed that she chose to respond literally to the appellant's request and did the following in regard to her search:

I conducted a search of human rights complaint files [specified number] and [specified number]. I provided the appellant with copies of all records, excluding any records that the Institution is claiming are exempt from disclosure under the *Act*...

I conducted a search of the OHRC's CIMIS database for files [specified number] and [specified number] for any records of telephone conversations that were recorded on the CIMIS database but were not printed in hard copy and placed in the complaint files. I did not find any records of telephone conversations on the CIMIS database that were not also placed in the complaint files.

I conducted a search of Intake file [specified number] and released to the appellant copies of the two records that were in the file. One of these records, titled "Record of Inquiry" refers to a telephone conversation between the complainant and the OHRC Intake Services Representative.

I conducted a search of the OHRC's CIMIS Intake database but did not locate any additional records of telephone conversations between OHRC staff and either the appellant or the complainant, except for the Record of Inquiry that was included in Intake file [specified number] and was disclosed to the appellant.

The Compliance Officer also refers to her email memos to the Supervisor of the OHRC Inquiry and Intake Branch as well as the Manager of the OHRC Inquiry and Intake Branch regarding the individuals referred to in the appellant's request and any records these individuals may have kept. No further records were located. A copy of these email memos were provided to this office and the appellant.

The Compliance Officer also sent email memos to the OHRC Network Administrator and a specific Intake Services Representative in her search for the missing telephone conversations. No additional records were located.

The Compliance Officer concludes with the following:

It is possible, but not very likely, that records of telephone conversations between the appellant or the complainant and various OHRC staff, which were not located in files [specified file numbers] and are not recorded on the OHRC CIMIS database existed, but no longer exist. This is for the reason that OHRC staff generally record all of their telephone conversations associated with the processing of an Inquiry or a Complaint directly onto the OHRC CIMIS database either as a record of contact, comment sheet or on one of the standard forms used by the OHRC in its case processing procedures. Also, in the case of any telephone conversations with the OHRC receptionist or with any other OHRC staff who were either not assigned to the complaints or who were no longer working on the complaints because they have moved on to the next stage of the OHRC's case processing procedure, these individuals would likely not have made records of any such telephone conversations.

The appellant was provided with a copy of the Compliance Officer's affidavit and made the following submission:

The affidavit of [the Compliance Officer] does not include any action of Inquiry with respect to a telephone conversation with [specified] Intake Officer. [Specified Intake Officer] was specifically named as one of the OHRC employees whom [the appellant] had contact with...

I am respectfully requesting the IPC to direct the OHRC to undertake the same actions as [the Compliance Officer] has presented with respect to her searching for documents with other named OHRC personnel.

In response, the Compliance Officer provided the following explanation:

As indicated in my affidavit,..., I contacted both the former Supervisor,..., and the former Manager...I did not ask for specific information with respect to any telephone conversations that may have taken place with the appellant and [named Intake Officer] because none of the four request letters submitted by the appellant specifically referred to [named Intake Officer]...

The Compliance Officer goes on to explain that the named Intake Officer is no longer employed with the OHRC and as a result she is not able to require that he undertake the same search for records. However, the Compliance Officer states that she has undertaken the searches she affirmed to in her affidavit and the Supervisor and Manager of the Intake and Inquiry Branches have also done the same and no further records were located.

As stated above, the *Act* does not require the OHRC to prove with absolute certainty that further records do not exist. The OHRC must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. From my review of the OHRC's representations, the appellant's representations and the records, I am satisfied that the OHRC's

search was reasonable in the circumstances. The OHRC's Compliance Officer provided a comprehensive description of the steps she took to locate the records which the appellant alleged were missing, including contacting the individuals named by the appellant and their managers and supervisors. I find that the OHRC has provided sufficient evidence to show that it has made a reasonable effort to identify and locate the records that are responsive to the appellant's request. Accordingly, I find that the OHRC has conducted a reasonable search for responsive records and I dismiss this part of the appeal.

CORRECTION OF PERSONAL INFORMATION

As identified above, the appellant also requested that the OHRC correct the records in appeals PA07-421, PA07-422 and PA07-423 pursuant to section 47(2) of the *Act*. Section 47(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 47(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information. Sections 47(2)(a) and (b) read:

Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information where the individual believes there is an error or omission therein;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

Where the institution corrects the information or attaches a statement of disagreement, under section 47(2)(c), the appellant may require the institution to give notice of the correction or statement of disagreement to any person or body to whom the personal information has been disclosed within the year before the time the correction is requested or the statement of disagreement is required.

Requests and Response from OHRC

During mediation, the appellant made correction requests in three of the appeals. In all three cases, the OHRC denied the correction request.

In appeal PA07-421, the appellant requested that a copy of his letter to the Chief Commissioner and its attachments be placed in his wife's human rights complaint file. The OHRC denied the correction request because the appellant was currently waiting for a decision from the Commissioners on whether to grant him an extension of time to file his application for Reconsideration. The OHRC informed the appellant that should the appellant's extension request be allowed, the appellant could submit the letter and its attachments (the subject of the appellant's correction request) as part of his Reconsideration application. The OHRC also

informed the appellant that he was entitled to require that a statement of disagreement be attached to the record.

In appeal PA07-422, the appellant again requested that a copy of his letter to the Chief Commissioner and its attachments (the same letter referred to above) be placed in his wife's human rights complaint file. Additionally, the appellant requested that his wife's personal information be corrected to delete certain words from the Intake Profile sheet. The OHRC denied the appellant's correction request because the Commission had reached its decision on the appellant's application for Reconsideration and had decided to uphold its original decision to not deal with the complaint. As the Commission's decision was final and there were no further steps in the Code's processes, the appellant's file was closed. The OHRC also informed the appellant that he was entitled to require that a statement of disagreement be attached to the record.

In appeal PA07-423, the appellant again requested that a copy of his letter to the Chief Commissioner and its attachments (the same letter referred to above) be placed in his wife's human rights Intake file. The OHRC denied the request because the appellant's Intake file had been closed because the appellant had not returned a complaint form. As the OHRC had not received a completed complaint form, the Intake file had been closed and sent to an Archive database. Again, the OHRC informed the appellant that he was entitled to require that a statement of disagreement be attached to the record.

In each case, the appellant was not satisfied with the statement of disagreement option presented by the OHRC.

Missing notes of conversations

In the present appeal the appellant submits that a number of records are missing from his wife's two complaint files and her intake file. The appellant's letter to the Commissioner of the OHRC which includes his correction requests states:

...The Commission records do not indicate discussions between [the appellant] and Commission Intake Service Representative staff on October 4, 2006 or October 16, 2006.

...The Commission records do not indicate discussions between [the appellant] and Commission Intake Service Representative. The handwritten notes of [the appellant] should be included in the file.

...Commission records do not include discussions between [the appellant] and Commission's [named individual] on April 30, 2007. The documentation by [named individual] dated April 23, 2007 does not include all the information discussed.

...The Commission records do not indicate discussions between [the appellant] and Commission Intake Representative, [named individual] on November 5, 2005

regarding complaint against the employer or the discussions regarding request to file a complaint...

...[The appellant] had discussions with [named] Commission Intake Services Representative on June 26, 2007, and July 3, 2007. [The appellant's] handwritten notes of the discussions are attached.

There is one notable common factor in all three complaints. Intake Service Representatives do not record their conversations with the Complaint's Representative. In this case there are no records made by the Intake Service Representative of conversations with [the appellant].

Section 47(2) of the *Act*, as cited above, requires that to make a correction request, an individual must have been "...given access under subsection (1) to personal information..." As the appellant has not been given access to the records he is claiming need to be corrected, there can be no right of correction. To be clear, as there are no records of these conversations between the appellant and the various OHRC staff members, the appellant cannot request that these records be corrected under section 47(2) of the *Act*.

I will now deal with the appellant's correction request in PA07-421 regarding the content of one of the conversations between the appellant and an OHRC officer and the appellant's correction request in PA07-422 where he asks that his wife's Intake Profile be corrected relating to the date of accommodation.

Grounds for Correction

In Order 186, former Commissioner Tom Wright set out the requirements necessary for granting a request for correction, as follows:

1. the information at issue must be personal and private information; and
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.

I adopt these grounds for the purposes of the present appeal.

Is the information personal and private information?

The right of correction only applies to any personal information of the appellants that may be contained in the record. The term "personal information" is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual." The types of information that qualify as "personal information" include information about an individual's medical and employment history (paragraph (b)), any identifying number or other particular assigned to an individual (paragraph (c)), the personal opinions or view of the individual (paragraph (e)), and the

individual's name where it appears with other personal information relating to the individual (paragraph (h)).

The OHRC submits that the information that the appellant seeks to correct is personal information in all three of the appeals. From my review of the records and the letter which is the subject of the appellant's correction request, I find that the information qualifies as the personal information of the appellant and his wife. In particular, I find that the records contain personal information about the appellant and his wife that fits within paragraphs (b), (c), (e) and (h) of the definition of that term in section 2(1), as described in the first paragraph of this section.

Is the information at issue, inexact, incomplete or ambiguous?

For section 47(2)(a) to apply, the information must be "inexact, incomplete or ambiguous". However, even if the information is "inexact, incomplete or ambiguous", this office may uphold the institution's exercise of discretion if it is reasonable in the circumstances [Order PO-2258].

The OHRC submits that the personal information in the file is inexact, incomplete or ambiguous because:

The information contain in human rights complaint files consists of the records that are submitted by either the complainant or the respondent named in a complaint and any records that are either produced internally by OHRC staff, or obtained by OHRC staff from an outside source, other than the complainant or the respondent, during the case processing of a complaint. As a result, the information contained in the file [specified file number] may include records from either the complainant or respondent that are incomplete, inexact or ambiguous or that consists of an opinion. By the same token, records in file [specified file number] that were produced or obtained by OHRC staff may be inexact, incomplete or ambiguous.

While the appellant does not make specific representations on this issue, the appellant's letter relating to his correction request submits that the record is inexact in regard to her Intake Profile (appeal PA07-422) and incomplete in regard to recorded conversation between the appellant and the OHRC staff member in appeal PA07-421.

I have considered the records at issue as well as the letter and attachments that are the subject of the appellant's correction request. From my review of the representations and the correction request, I find that the Intake Profile that contains the information about the complainant's accommodation status to be incorrect. As the appellant submits, his wife was not accommodated until later. Clearly, this is an incorrect statement in the Intake Profile.

On the other hand, I find that the documentation of the conversation between the appellant and the OHRC staff member to be clear and unambiguous. While the record does not contain the level of detail wished by the appellant, I am satisfied that the record contains a full and accurate statement of the telephone conversation. In this case, I am not satisfied that correction is justified.

I must now consider whether the OHRC's decision to deny the correction request was reasonable despite the fact that some of the information in the Intake Profile was incorrect. The OHRC argues that it did not grant the correction request of the Intake Profile because the complainant's file had been closed and there were no further steps available with respect to the Commission's procedures. In addition, the OHRC states that as the file has been closed, there is no way to attach a copy of the appellant's correction request. The OHRC states that it did respond to the appellant's correction request in prior correspondence and advised the appellant of the option of attaching a statement of disagreement.

Based on my review of the OHRC's decision and the appellant's request, I find that the OHRC's decision to deny the correction request was unreasonable. The fact that the complaint file is closed and there are no further steps available to the appellant does not change the fact that there is incorrect information on his wife's Intake Profile. Even if the correction request would result in no material change to the OHRC's decision regarding the disposition of the complaint file does not mean that the correction should not be made. Accordingly, I find that the appellant's correction request should be allowed and the information which states, "C was on accommodation since November 22" should be deleted as per the appellant's request.

ORDER:

1. I uphold the decision of the OHRC to deny access to the records at issue in this appeal.
2. I uphold the OHRC's search as reasonable.
3. I order the OHRC to correct the Intake Profile form as referred to above.
4. In order to verify compliance with provision 3 of this Order, I reserve the right to require the OHRC to provide me with a copy of the record that has been corrected.

Original signed by: _____
Stephanie Haly
Adjudicator

_____ May 20, 2009