



Information and Privacy
Commissioner/Ontario

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

ORDER 89

Appeal 890024

Ontario Human Rights Commission



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September 7, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 89
Ontario Human Rights Commission
Appeal Number 890024

This letter constitutes my Order in your appeal from the decision of the Ontario Human Rights Commission (the "institution") regarding your request for information made under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

The appeal file indicates that on December 20, 1988, you wrote to the institution asking for access to the following:

...documents in the possession of Ontario Human Rights Commission concerning complaints about pornographic magazine sales.

It is my understanding that the Commission is dealing with a number of complaints concerning the sale of magazines by variety stores in the west end of Toronto.

Please provide me with all documents that:

- 1) identify the complainant
- 2) identify the store by name and address and or individual the complaint is against

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- 3) the specifics of the complaint
- 4) the status of the case

- 5) any documents containing the opinions or advice by your staff or government lawyers or outside legal consultants concerning the commission's jurisdiction in this area.

On January 28, 1989, the institution's Freedom of Information and Privacy Co-ordinator responded to your request as follows:

For ease of reference, I will address each of the matters in the same order noted in your letter dated December 20, 1988.

- 1-4 Access is denied to the human rights files dealing with pornographic magazine sales in accordance with Sections 14(1)(a) and 14(1)(b) of the Act. These sections apply because disclosure of the records could reasonably be expected to interfere with a law enforcement matter.

- 5 Access is denied to legal memoranda in accordance with section 19 of the Act. This section applies because the records were prepared by Crown counsel for use in giving legal advice and subject to solicitor client privilege.

On February 16, 1989, you wrote to me appealing the decision of the institution. In your letter you indicated a willingness to accept the institution's refusal to produce documents in response to item 5, but not items 1-4. You stated that "...the Ontario Human Rights Commission should have to demonstrate how, in this case, disclosing the information would or could in fact interfere with a law enforcement matter."

As you know, as soon as your appeal was received by my office, an Appeals Officer was assigned to investigate the circumstances of the Appeal and attempt to mediate a settlement.

The Appeals Officer obtained and reviewed the records in question. They consist of six complaint forms used by the institution to register complaints made under the Ontario Human Rights Code, 1981, (the "Code").

The forms contain information under the following headings:

complaint #; Code provision #; name and mailing address

of complainant; name and address of individual/organization complained about; day, month and year of the contravention; name and address of persons/class of persons whose rights have been infringed; grounds of contravention; particulars of the complaint; the signature of the complainant; and the date, month, year and place the document was signed.

During mediation, the institution raised subsection 14(2)(a) as an additional ground for denying access to the records. In the institution's view, complaint forms qualified as "reports prepared in the course of law enforcement" under that subsection.

Settlement of all issues in this appeal was not achieved during mediation. However, the institution did change its original position, and indicated a willingness to provide some information in response to items 3 and 4 of your request. Specifically, the institution was prepared to release severed copies of the complaint forms and an April 21, 1989 letter sent to the complainants reporting on the status of their complaints. All identifying information about the complainants and the stores against whom the complaints were lodged (the "respondents") would be severed by the institution. Because you remained interested in obtaining the names of the complainants and the names and addresses of the respondents, it was not possible to settle items 1 and 2 of your request through mediation, and the appeal proceeded to the inquiry stage.

Accordingly, an Appeals Officer's Report was prepared and sent to you, the institution, and all affected parties (i.e. complainants and respondents) on June 7, 1989, together with a Notice of Inquiry. All parties were asked to make representations to me concerning the subject matter of the appeal.

Representations were received from the institution, the complainants and the respondents, and you chose to rely on the arguments raised in your February 16, 1989 appeal letter. I have taken all representations into account in reaching my decision.

As indicated above, the institution has cited subsections 14(1)(a) and (b) as one of its bases for refusing to disclose some of the requested information. These subsections read as follows:

A head may refuse to disclose a record where the 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;

...

In order to decide whether either of these subsections apply, I must examine the provisions of the Code, as well as the procedures used by the institution in carrying out its mandate under the Code. The institution administers and enforces the Ontario Human Rights Code, 1981, and is responsible for implementing a program of compliance and conciliation. To carry out this mandate, the institution receives or initiates complaints; investigates and mediates complaints; and prosecutes violations of the Code.

The institution is required to investigate and attempt to settle any complaint it decides to deal with. If settlement is not achieved, the institution may decide to refer the matter to a board of inquiry constituted under the Code. The board conducts a hearing, and, if it finds that a right under the Code has been infringed by a party to the proceedings, the board is empowered to make a binding order directing that party to comply with the Code and/or to make restitution, including monetary compensation.

I have examined the complaint file which is the subject of this appeal, and it is clear from the contents that the institution has decided to deal with the complaints and has commenced an investigation. If settlement is not achieved, this investigation could lead to proceedings before a board of inquiry. After considering the representations received from various parties, and reviewing the records at issue in this appeal, in my view, the investigation of these complaints qualifies as a "law enforcement matter" within the meaning of subsection 14(1)(a) of the Act, and the proceedings of a board of inquiry under the Code would be "law enforcement proceedings" within the meaning of subsection 14(1)(b) of the Act.

Having found that investigations by the institution are properly "law enforcement matters", I must now decide whether disclosure of the names of the complainants and respondents in this case could reasonably be expected to interfere with these investigations.

In reaching this decision, it is important to bear in mind that there are two distinct stages in the processing of a complaint under the Code. First there is a period of investigation and mediation, and, if mediation is not successful, a decision is made whether to refer the matter to a board of inquiry. The board of inquiry, if established, constitutes the second stage, and hearings before this board are conducted in public.

During the investigation stage, the institution has broad statutory powers. Subsection 32(3) of the Code, provides that a person authorized to investigate a complaint may,

- (a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating a complaint;
- (b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;
- (c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and
- (d) question a person on matters that are or may be relevant to the complaint subject to the persons right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

An investigator may, under the authority of a warrant, enter and search a place used as a dwelling without the consent of the occupier, (ss.32(7) and (8) of the Code). The Code also makes it an offense for any person to hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under the Code.

In my view, the ability to conduct an investigation without interference is vital to the institution's effectiveness in carrying out its responsibilities and mandate under the Code. I have carefully considered the representations of the institution and the reasons presented by the affected parties for objecting to disclosure and, in my view, the release of the identities of the complainants and the respondents, could, in the circumstances of this case, reasonably be expected to interfere with the institution's investigation of the complaints.

Because I have found that exemptions provided by subsections 14(a) and (b) of the Act apply to the information at issue in this appeal, it is not necessary for me to consider the application of subsection 14(2)(a).

Accordingly, by copy of this letter I order the institution to release the six complaint forms and the April 21, 1989 status letter, after severing all identifying information, including the names of the complainants and the names and addresses of the respondents, to you within twenty (20) days from the date of this Order. The institution is further ordered to advise me in writing, within five (5) days of the date of disclosure of these records, of the date on which disclosure was made.

Yours truly,

Sidney B. Linden
Commissioner

cc: - Ms Catherine Frazee, Chief Commissioner
Ontario Human Rights Commission
- Mr. Anthony Griffin, Counsel
Ontario Human Rights Commission
- All Affected Parties