



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1405**

**Appeal P\_9700040**

**Ontario Human Rights Commission**



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## **NATURE OF THE APPEAL:**

The Ontario Human Rights Commission (the OHRC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a copy all records in the appellant's complaint file. The request was worded as follows:

Kindly transfer the contents of this file to the Ontario Teachers' Federation (pursuant to the Human Rights Commission's decision regarding the complaint of Sexual Harassment).

The OHRC granted access in full to 1118 pages of responsive records and denied access in full to 21 pages, based on the following exemptions under the Act:

- advice or recommendations - section 13(1)
- invasion of privacy - sections 21 and 49(b)
- discretion to refuse requester's own personal information - section 49(a)

The appellant appealed this decision.

During mediation, the appellant indicated that her request included any records which would identify "who was involved in the decision making process at the [OHRC]" in regards to her complaint, and that such records should be considered responsive to her request.

A Notice of Inquiry (the NOI) was provided to the appellant and the OHRC. Subsequently, the appellant informed the Appeals Officer that not all responsive records had been identified by the OHRC. This included her application for reconsideration of the OHRC's decision with respect to her complaint as well as the records which would identify OHRC staff involved in the decision making process.

In response, the OHRC acknowledged that reconsideration records would form part of the responsive records but were not included in its original decision. Accordingly, the OHRC conducted another search to locate these records.

As a result, the OHRC identified an additional 159 pages of responsive records regarding the appellant's application for reconsideration. The OHRC issued a new decision to the appellant in which 157 pages were disclosed in full, one page in part and access to one page was denied in full. The OHRC claimed exemption under sections 13(1) and 49(a) of the Act for the additional undisclosed information. These additional records are included in this appeal.

With respect to records which would identify OHRC staff involved in the decision making process, it was determined that this information was contained in "Commission minutes". These minutes do not form part of the investigation file and, therefore, it was the OHRC's position that these records are not responsive to the appellant's request.

Notwithstanding the foregoing, the OHRC disclosed a copy of the "Case Review Panel Meeting Minutes", which identified the OHRC panel members.

Consequently, the records at issue in this appeal total 23 pages (22 in whole and one in part) and consist of a Case Disposition Form (Page 1), a File Tracking Form (Page 2), two draft Case Analyses (Pages 4-10 and 11-17), investigator's handwritten notes (Pages 3 and 18-21), draft reasons (Page 22) and portions of a Reconsideration Report (Page 23).

Representations were received from the appellant and the OHRC.

### **PRELIMINARY MATTERS:**

In her representations, the appellant raises four additional issues which can be summarized as follows:

1. Disclosure of the names of individuals involved with the decision making process at the OHRC.
2. Some of the records which were transferred to the Ontario Teachers' Federation (the OTF) in response to her request were unknown to her and she now wishes to have copies provided directly to her (in particular, 68 pages of Intake records).
3. With respect to the records referred to in point number 2, these records were transferred without her knowledge and, as a result, her personal privacy has been unjustly invaded.
4. Some of the records submitted by her to the OHRC do not appear on the index of records which were disclosed. These records should be located and copies provided to her.

With respect to Point 1, as I indicated above, the OHRC, as the result of a concern raised by the appellant, disclosed the OHRC "Case Review Panel Meeting Minutes" pertaining to her case. This document contains the identity of the panel members. Regardless of whether this record is, in fact, responsive to the request, in my view, this issue has been resolved and I will not consider it further. If the appellant wishes to obtain access to any further information in this regard, she must submit a new request to the OHRC.

With respect to Points 2 and 3, as noted at the outset of this order, the appellant requested that all records in her OHRC complaint file be transferred to the OTF. Further, I also note that in her letter of appeal she states that, "I wish to have the **entire** contents of the file sent to the [OTF] for review" [emphasis added]. With the exception of the 22 pages in whole and one page in part at issue in this appeal, the OHRC complied with this request. In addition, OHRC's transfer letter to the OTF, dated March 11, 1997, was copied to the appellant. The NOI in this appeal was issued on April 21, 1997, but the issues described in Points 2 and 3 were not raised by the appellant until May 12, 1997 (during a telephone call with the Appeals Officer), and in her representations received by this office on May 20, 1997. In my view, the OHRC did exactly what the appellant requested and the opportunity for these issues to be known to the appellant occurred approximately six weeks prior to the issuance of the NOI in this matter. Accordingly, I will not consider these two issues further.

Finally, the concern regarding the existence of further records of the nature described in Point 4, is raised for the first time by the appellant in her representations. She points out that this also came to her attention as the result of her review of the list of documents disclosed to the OTF which, as I noted above, was provided to her on March 11, 1997. The appellant does not identify these additional records nor does she provide me with any reasons why I should consider the late raising of this issue. Accordingly, I will also not consider this issue further. If the appellant believes that more records exist, she may submit a new request to the OHRC.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

I have reviewed the records at issue. I find that all of the records contain the personal information of the appellant and that Pages 3-21 contain the personal information of other identifiable individuals as well.

### **ADVICE OR RECOMMENDATIONS / DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION**

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the Act, the OHRC has the discretion to deny access to records which contain an individual’s own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include the exemption claimed with respect to Pages 1-2, 4-17, 22 and 23, namely advice or recommendations (section 13(1)). In the discussion which follows, I will consider whether these records qualify for exemption under this section as a preliminary step in determining whether the exemption in section 49(a) applies to them.

Section 13(1) of the Act states:

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

It has been established in a number of previous orders that in order to qualify as “advice” or “recommendations” within the meaning of section 13(1), the information contained in the records must relate to a suggested course of action which will ultimately be accepted or rejected

by its recipient during the deliberative process. In addition, the information must relate to the giving of advice or the making of a recommendation, as opposed to the seeking of such information.

The OHRC submits the following representations with respect to the records to which this exemption has been applied:

1. Pages 1-2 contain the recommendation of OHRC staff to the Commissioner relating to the disposition of the appellant's case and describes a suggested course of action.
2. Pages 4-17 are draft case analyses and contain notes of discussion between staff regarding the final version which was disclosed to the appellant.
3. Page 22 contains draft reasons submitted by OHRC staff to the Commission and the information severed from Page 23 contains the staff recommendation respecting the position the Commission should take with respect to the appellant's application for reconsideration.

The appellant submits that if the information to which this exemption has been applied is also her personal information related to her complaint, she should be entitled to it.

I have carefully reviewed the records at issue and the representations I have received on this issue. In my view, Pages 1, 4-17, 22, 23 and the information under the heading "Recommendation of Officer/Manager" on Page 2 contain suggested courses of action which may be accepted or rejected by the recipients of the recommendations and/or advice and, as such, this information falls within the exemption provided by section 13(1). Accordingly, Pages 1, 4, 17, 22 and 23 and the portion of page 2 under the heading "Recommendation of Officer/Manager", are exempt from disclosure under section 49(a) of the Act.

With respect to the remaining information on Page 2, I find that it is factual information and contains no advice or recommendations within the meaning of section 13(1) of the Act and should, therefore, be disclosed to the appellant.

## **INVASION OF PRIVACY**

The OHRC submits that section 49(b) applies to exempt Pages 3 and 18-21 from disclosure. Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the OHRC determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the OHRC has the discretion to deny the requester access to that information. As noted above I have found that Pages 3 and 18-21 contain the personal information of the appellant and other identifiable individuals.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record,

**the only way** such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the OHRC must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The OHRC argues that the personal information is identifiable as part of an investigation into a possible violation of law, namely the Ontario Human Rights Code (the Code) and, therefore, disclosure would create a presumed unjustified invasion of personal privacy pursuant to section 21(3)(b) of the Act.

The appellant raises the consideration in section 21(2)(d) of the Act (disclosure is relevant to a fair determination of her rights) and argues that disclosure of the records would not be an unjustified invasion of personal privacy.

I find that the personal information on Pages 3 and 18-21 was compiled as part of the OHRC's investigation into the appellant's complaint. I adopt and apply the findings in previous orders of this office that an investigation conducted by the OHRC into allegations of breaches of the Code constitutes an "investigation into a possible violation of law" for the purposes of section 21(3)(b) of the Act (Orders P-449, P-507 and P-510). Accordingly, I find that the personal information contained in Pages 3 and 18-21 falls within the presumption.

I have found that the presumption contained in section 21(3)(b) of the Act applies to Pages 3 and 18-21. Even if I were to accept the appellant's arguments, as I have previously indicated, a factor or combination of factors under section 21(2) cannot rebut a presumption under section 21(3).

I have considered the application of section 21(4) of the Act and find that none of the personal information at issue falls within the ambit of this provision and the appellant has not claimed that section 23 applies in this case. Thus, I find that disclosure of Pages 3 and 18-21 **would** constitute an unjustified invasion of the personal privacy of other identifiable individuals and, therefore, these pages are exempt under section 49(b) of the Act.

**ORDER:**

1. I uphold the decision of the OHRC to deny access to Pages 1 and 3-22 in their entirety, the severed portion of Page 23 and the portion of Page 2 which contains advice or recommendations.
2. I order the OHRC to disclose Page 2 except for the information under the heading "Recommendation of Officer/Manager" by sending the appellant a copy by **July 2, 1997**.
3. In order to verify compliance with this order, I reserve the right to require the OHRC to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ June 11, 1997