



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-250**

**Appeal 900091**

**Ministry of Correctional Services**



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## O R D E R

On July 8, 1991, the undersigned was appointed Assistant Commissioner and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act, 1987 the ("Act").

### BACKGROUND :

On January 2, 1990, the Ministry of Correctional Services (the "institution") received a request for access to any information which referred to either C-2 dorms or to the requester's name in an internal investigation conducted by the institution into a disturbance which took place on July 27, 1989 at the Guelph Correctional Centre.

The institution identified an investigation report regarding the July 27, 1989 disturbance as the sole record responsive to the request.

The requester was given access to a summary of his own statement, as well as the transcript of the interview from which the summary was prepared during the course of the investigation. Access to the rest of the investigation report was denied by the institution pursuant to sections 13(1), 14(1) (b) (c) (d) (e) (i) (j) (k) and (l), 14(2) (a) and (d), 20 and 21 of the Act. The requester appealed the institution's decision to this office.

A copy of the record was obtained and reviewed by the Appeals Officer assigned to the case.

**ISSUES:**

The issues arising in this appeal are as follows:

- A. Whether the record is properly exempt from disclosure pursuant to section 14(2) (a) of the Act.
- B. If the answer to issue A is "no", whether the record is properly exempt from disclosure pursuant to any of sections 13(1), 14(1) (b) (c) (d) (e) (i) (j) (k) and/or (l), 14(2) (d), 20, 21(1) and/or 49(b) of the Act.

**SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the record is properly exempt from disclosure pursuant to section 14(2) (a) of the Act.**

The institution has claimed section 14(2)(a) to exempt the record in its entirety. Section 14(2) (a) reads as follows:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

Former Commissioner Sidney B. Linden considered the application of the section 14(2) (a) exemption in Order 38, dated February 9, 1989. At page 4 of that Order, Commissioner Linden stated:

Subsection 14(2) (a) is unusual in the context of the Freedom of Information and Protection of Privacy Act, 1987 in that it exempts a type of document, a report. The exemption does not require that the report meet

additional criteria such as a reasonable expectation of some harm resulting in the disclosure of the report, or specifications about the contents thereof.

...

Under subsection 14(2)(a) the head may exercise his or her discretion to deny access to an entire report.

I concur with Commissioner Linden's view of section 14(2)(a) and adopt it for the purposes of this appeal. If the report is found to meet the requirements for exemption under this section, then the institution has the discretion to deny access to the report in its entirety.

In Order 200, then-Assistant Commissioner Tom Wright outlined the following three-part test which an institution must satisfy in order to properly exempt a record under section 14(2)(a):

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

Having viewed the record at issue in this appeal, I find that it is clearly a report, thereby satisfying the first part of the test.

Turning to the second part of the test, section 2(1) of the Act defines "law enforcement" 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);

In its representations, the institution submitted that the record was prepared by the institution's Investigations and Security Unit in order to enforce the requirements of the Ministry of Correctional Services Act and its regulations. The institution maintained that the report also contains information regarding the involvement of the local police department in matters pertaining to the Criminal Code of Canada.

I agree with the institution's position. The institution performed the investigation in its capacity as the agency responsible for the operation of correctional facilities in the province. The investigation could have led to proceedings in a court or tribunal and, in my view, the report prepared as part of this investigation is properly characterized as one which was "prepared in the course of law enforcement, inspections or investigations".

That leaves the third part of the test for exemption under section 14(2)(a): was the report prepared by an agency which has the function of enforcing and regulating compliance with a law?

The Ministry of Correctional Services Act, R.S.O. 1980, c. 275, as amended, includes a number of provisions which establish the institution as the agency responsible for the operation of the

province's correctional facilities. The mandate and responsibilities of the institution include the provision of secure custody of persons awaiting trial or convicted of an offence [section 4(a)], the maintenance and operation of correctional facilities [section 4(b)], and the authority to conduct inspections and investigations in connection with the operation of the statute [sections 22 and 23]. In its representations, the institution makes the following points in support of the position that it is an agency with the function of enforcing and regulating compliance with a law:

"It is our view that the Ministry of Correctional Services has within its mandate, the function of enforcing and regulating compliance with the law. The Ministry has the authority to enforce a warrant of committal; to apply varying degrees of discipline governing inmate conduct, such as restricting privileges, restricting meals, imposing a loss of remission whereby the inmate can remain incarcerated for longer period of time.

The Ministry can initiate charges of non-compliance with a probation order, and can issue a warrant to apprehension and committal in the case of a parole violator. The Ministry has the authority to release an inmate on a temporary absence from the institution and can revoke a temporary absence requiring the inmate to be returned to a correctional facility."

The institution, in this instance, conducted an investigation as a result of a major disturbance at a correctional facility, involving substantial destruction to the premises. The institution submits that the report which was produced as a result of the investigation contains detailed information regarding the riot control procedures undertaken by senior ministry officials, the special crisis team, and the police and fire departments. It also contains what the institution feels is sensitive information obtained in confidence during private

interviews which, in the wrong hands, could reasonably be expected to jeopardize the security of a correctional facility and possibly endanger the life or physical safety of others.

I have reviewed the contents of the record and the representations of both the institution and the appellant and, in my view, the report is properly characterized as one which was prepared by an agency which has the function of enforcing and regulating compliance with the law, specifically, the Ministry of Correctional Services Act. All three parts of the test for exemption under section 14(2)(a) are therefore satisfied.

In my opinion, the provisions of subsection 14(2)(a) were intended to permit an institution to exempt records such as the one at issue in this appeal. In the circumstances of this case, I find nothing improper in the head's decision to exercise his discretion in favour of exempting the record, and I uphold the head's decision to deny access to the record.

Because I have found that the section 14(2)(a) exemption applies, it is not necessary for me to consider Issue B.

**ORDER:**

I uphold the head's decision not to disclose the entire record.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_  
November 6, 1991  
Date