



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-315

Appeal P-910484

Ministry of the Solicitor General



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ORDER

BACKGROUND :

The Ministry of the Solicitor General (the institution) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to the requester and a number of named individuals and companies.

The institution initially refused to confirm or deny the existence of any responsive records, citing sections 14(3), 21(5) and 49(a) of the Act. Attempts to mediate the appeal were not successful and notice that an inquiry was being conducted to review the decision of the head was sent to the appellant and the institution.

After receiving the Notice of Inquiry, the institution issued a new decision, withdrawing its claims under sections 14(3) and 21(5), and granting the appellant partial access to the one responsive record. Access to the remainder of this record was denied, pursuant to sections 14(2)(a), 14(1)(g), 15(b) and 21(1) of the Act.

The record consists of a four-page account of the results of certain Royal Canadian Mounted Police inquiries regarding various persons and companies. Pages 003 and 004 of the record were denied in their entirety, and pages 001 and 002 were released, subject to severances.

The appellant and institution were given the opportunity to make further representations with respect to the new decision. Additional representations were received from the institution, and the appellant indicated that he wished to rely on the representations made in response to the original Notice of Inquiry.

ISSUES :

- A. Whether any of the information contained in the record qualifies as "personal information" as defined by section 2(1) of the Act.
- B. Whether any of the exemptions provided by sections 14(2)(a), 14(1)(g), 15(b) and/or 21(1) of the Act apply to any portions of the record.

C. If the record contains personal information of the appellant, whether the exemption provided by section 49(a) of the Act applies.

DISCUSSION:

ISSUE A: Whether the information contained in the record qualifies as "personal information" as defined by subsection 2(1) of the Act.

Personal information is defined in section 2(1) of the Act, in part, as follows:

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

- (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,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (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;

I have reviewed the record and, in my view, the parts which have not already been disclosed to the appellant contain recorded information about identifiable individuals other than the appellant, and thereby satisfy the requirements of the definition of personal information. One sentence on page 002 of the record refers to the appellant's employment history, and I

find that this sentence contains the personal information of the appellant.

ISSUE B: Whether any of the exemptions provided by sections 14(2)(a), 14(1)(g), 15(b) and/or 21(1) of the Act apply to any portions of the record.

I will first consider the application of section 14(2)(a).

Section 14(2)(a) of the Act 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;

In order to qualify for exemption under subsection 14(2)(a) of the Act, a record must satisfy each part of the following three part test:

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.

(Order 200)

It has been established in a number of previous orders that the test for exemption under section 14(2)(a) does not require any evidence that harm would result from disclosure of a record. If the record is found to be a "report" within the meaning of section 14(2)(a), and the other two requirements of the test for

exemption have been established, then the record may be exempt in its entirety. (Orders 38, 170)

The word "report" is not defined in the Act. However, it is my view that in order to qualify as a "report", a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact. (Order 200)

Having reviewed the record, in my view, it qualifies as a report for the purposes of the first part of the section 14(2)(a) test. It is a formal statement or account of the results of Royal Canadian Mounted Police inquiries and/or corporate searches regarding various persons and companies.

Turning to the second part of the test, I must consider the term "law enforcement". This term is defined in subsection 2(1) of the Act 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 states:

The record at issue is an investigative report prepared by the RCMP...[T]he investigation would have been necessary to determine the possibility of fraud or some other form of illegal activity. During the ... investigation information was relayed concerning the subject of the report, in relation to the matter being investigated.

I am in agreement with the institution's position and find that the second part of the section 14(2)(a) test has been satisfied.

I also find that the requirements of the third part of the test have been established. The report was prepared by the Royal Canadian Mounted Police, an agency which has the function of enforcing and regulating compliance with a law.

Therefore, in my view, the record meets the requirements for exemption under section 14(2)(a) of the Act.

Section 14(2)(a) is a discretionary exemption, which provides the head with discretion to disclose the record even if it meets the test for exemption. I have reviewed the institution's representations which outline the factors taken into account in exercising discretion in this appeal, and I find nothing improper and would not alter the decision on appeal.

Because I have found that the record qualifies for exemption under section 14(2)(a), I do not need to consider the applicability of sections 14(1)(g), 15(b) or 21(1).

ISSUE C: If the record contains personal information of the appellant, whether the exemption provided by section 49(a) of the Act applies.

In my discussion of Issue A, I found that one sentence on page 002 of the record contains the personal information of the appellant.

Section 47(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of an institution. However, this right of access is not absolute. Section 49 provides a number of exceptions to this general right of access. One such exception is found in section 49(a) of the Act, which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure

of that personal information; [emphasis added]

I have found under Issue B that the entire record at issue in this appeal qualifies for exemption under section 14(2)(a). The exemption provided by section 49(a) therefore applies, and gives the head discretion to refuse disclosure with respect to those portions of the record that consist of the appellant's personal information. The head has exercised his discretion and denied the appellant access to his personal information. I have reviewed the manner in which discretion was exercised in this case, and I have found nothing improper, and would not alter it on appeal.

ORDER:

I uphold the head's decision to deny access to the remaining parts of the record.

Original signed by:

June 16, 1992

Tom Mitchinson
Assistant Commissioner