



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

ORDER P-467

Appeal P-9200101

Ministry of the Attorney General



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ORDER

BACKGROUND:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records relating to "a product known as 'Skratch'".

The Ministry contacted the requester to clarify his request. Further clarification was provided by the requester who identified particular records relating to a different product, as being responsive to his request.

The Ministry responded by providing the requester with partial access to the records. Access was denied to the remainder of the records pursuant to sections 14, 19 and 21 of the Act. The requester appealed the Ministry's decision to deny access and indicated that he believed more records exist which are responsive to his request.

During mediation, the Ministry conducted a further search for the records and confirmed that no other responsive records were found.

The record which the Ministry identified as being responsive to the clarified request consists of 142 pages. The requester was given access to 113 pages in their entirety. The pages of the record which remain at issue are pages 114-142. These pages were withheld in their entirety and consist of Confidential Instructions for Crown Attorney (page 114), an internal Ontario Provincial Police memorandum (pages 115-118), handwritten notes of a Crown Attorney (pages 119-128), Arrest/Charge/ Show Cause reports (pages 129, 134 and 136), computer printouts of criminal records (pages 130-132, 135 and 142), summons to a witness (page 133) and Occurrence Reports (137-141).

Further mediation was not successful, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry and the appellant. Written representations were received from both parties.

ISSUES:

The issues arising in this appeal are:

- A. Whether the search conducted by the Ministry for the requested records was reasonable in the circumstances.
- B. Whether the information contained in the record qualifies as personal information as defined by section 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the mandatory exemption provided by section 21 of the Act applies to the record.

- D. Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to the record.
- E. Whether the discretionary exemption provided by section 19 of the Act applies to the record.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the search conducted by the Ministry for the requested records was reasonable in the circumstances.

In his representations, the appellant states that it is his belief that more records exist which are responsive to his request.

In its representations, the Ministry included an affidavit sworn by the Crown Attorney who conducted the search. The affidavit attests to the steps taken by the Crown Attorney to locate any responsive records. During the search, the Crown Attorney identified 142 pages which were responsive to the request. No further records were found.

Having reviewed the representations of the parties and the affidavit provided by the Ministry, I am satisfied that the Ministry has taken all reasonable steps to locate records responsive to the request, and I find that the search conducted by the Ministry was reasonable in the circumstances.

ISSUE B: Whether the information contained in the records qualifies as personal information as defined by section 2(1) of the Act.

Section 2(1) of the Act states in part:

"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,

(c) any identifying number, symbol or other particular assigned to the individual,

(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 at issue and, in my view, only pages 114, 129-136 and 142 contain information that falls under the definition of personal information in section 2(1). I find that this personal information relates solely to individuals other than the appellant.

ISSUE C: If the answer to Issue B is yes, whether the mandatory exemption provided by section 21 of the Act applies to the records.

Under Issue B, I found that pages 114, 129-136 and 142 contain the personal information of individuals other than the appellant.

Section 21(1) of the Act prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in certain circumstances listed under the section.

In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f), which reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

In the circumstances of this appeal, the representations I have been provided with weigh in favour of finding that the section 21(1)(f) exception does not apply, and in the absence of evidence to the contrary, I find that the mandatory exemption provided by section 21(1) applies to pages 114, 129-136 and 142.

ISSUE D: Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to the records.

The Ministry submits section 14(2)(a) applies to pages 115-118 and 137-141 of the record.

Section 14(2)(a) of the Act states:

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 properly exempt a record under section 14(2)(a), the Ministry must demonstrate that the record satisfies 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 the law.

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I have considered the pages at issue and, in my view, all of them satisfy each part of the three-part test outlined above. Each report qualifies as a report as it consists of summaries of investigations of alleged violations of the Criminal Code of Canada (the Criminal Code), findings of fact by the investigator, conclusions about the validity of the allegations and recommended course of action. Further, the reports were prepared in the course of investigations conducted pursuant to the Criminal Code, with a purpose to determine if grounds existed to lay charges. Finally, the records were prepared by police officers with the Ontario Provincial Police, which has the function of enforcing the Criminal Code. Therefore, I find that pages 115-118 and 137-141 qualify for exemption pursuant to section 14(2)(a) of the Act.

Section 14(2)(a) is a discretionary exemption which allows the Ministry to disclose records which qualify for the exemption. In reviewing the Ministry's exercise of discretion in favour of refusing to disclose the above-mentioned pages of the record I have found nothing to indicate that the exercise of discretion was improper, and will not alter it on appeal.

ISSUE E: Whether the discretionary exemption provided by section 19 of the Act applies to the records.

The Ministry submits that the remaining pages of the record, pages 119-128, are exempt under section 19 of the Act. Section 19 reads as follows:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

This section consists of two branches, which provide a head with the discretion to refuse to disclose:

- (1) a record that is subject to the common law solicitor-client privilege (Branch 1); and
- (2) a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The Ministry submits that the records qualify for exemption under Branch 2 of the section 19 exemption.

Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

1. the record must have been prepared by or for Crown counsel; and
2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

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In its representations, the Ministry states that pages 119-128 of the record consist of handwritten notes made by the Crown Attorney for use in litigation. I have carefully reviewed these pages of the record and in my view, they satisfy the requirements for exemption under Branch 2 of the section 19 exemption.

Because section 19 is a discretionary exemption, I have also reviewed the Ministry's representations regarding its decision to exercise discretion in favour of refusing to disclose the information. I find nothing improper in the exercise of discretion, and will not alter it on appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ June 3, 1993