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

ORDER P-460

Appeal P-9200672

Ministry of the Solicitor General and Correctional Services

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ORDER

BACKGROUND:

The Ministry of Correctional Services (now the Ministry of the Solicitor General and Correctional Services) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the requester's institution file from the Whitby Jail. The Ministry granted access to most of the records but denied access to some records, either entirely or in part, pursuant to sections 49(b), 14(1)(h) and 14(2)(d) of the Act. The requester appealed the Ministry's denial of access.

Mediation resulted in a narrowing of the number of records at issue in the appeal, the elimination of section 49(b) as an issue, and the additional application of section 14(1)(e) of the Act. A complete settlement was not effected and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Written representations were received from both parties.

The records at issue are pages 486, 510 and 561. The Ministry has denied access to these three records under section 49(a) pursuant to sections 14(1)(e), 14(1)(h) and 14(2)(d) of the Act.

ISSUES:

The issues arising in this appeal are:

A. Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.

B. Whether the records qualify for exemption under section 14(1)(h) of the Act.

C. Whether the records qualify for exemption under section 14(1)(e) of the Act.

D. Whether the records qualify for exemption under section 14(2)(d) of the Act.

E. If the answer to Issue A and Issues B, C or D is yes, whether the discretionary exemption provided by section 49(a) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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

Section 2(1) of the Act reads, 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,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> ...
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> ...
>
> (g) the views or opinions of another individual about the individual, and
>
> (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 pages 486, 510 and 561. I find that these three records contain personal information as defined in the subparagraphs of section 2(1) set out above. In my view, the personal information is that of the appellant only.

ISSUE B: Whether the records qualify for exemption under section 14(1)(h) of the Act.

The Ministry submits that section 14(1)(h) of the Act applies to the three records at issue. This section reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,

> reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;

The three records at issue in this appeal are Occurrence Reports which are not themselves records which have been confiscated. In order for me to uphold the Ministry's application of section 14(1)(h), I must be satisfied that the disclosure of a record could reasonably be expected to reveal, by permitting the drawing of accurate inferences about, a record actually confiscated by a peace officer under an Act or regulation.

In its representations, the Ministry states that the information on page 486 is:

> ... a record of contraband confiscated by a peace officer by virtue of a warrant in accordance with a statute or regulation.

The Ministry states that the Superintendent of the Whitby Jail is a designated "peace officer" under section 11(1)(a) of the Ministry of Correctional Services Act (the MCSA) and that the Superintendent was acting in his capacity as a peace officer when he confiscated the information from the appellant under the authority of Regulation 649 (now R.R.O. 1990, Reg. 778) (the Regulation). In Order P-421, Inquiry Officer Asfaw Seife found that a Superintendent has status as a peace officer and has authority to confiscate contraband pursuant to the Regulation. I agree.

The Ministry has indicated that the items referred to in page 486 were confiscated under a warrant, which was authorized by a statute (the Criminal Code of Canada). If this is the case, the police officer executing the warrant has the authority to confiscate required by the section 14(1)(h) exemption.

Pages 486 and 510 simply document the fact that other records were confiscated. The confiscated records are not described in any specific detail, and I am not satisfied that disclosure of pages 486 and 510 would "reveal" the records which were actually confiscated. Therefore, in my view, section 14(1)(h) of the Act does not apply to pages 486 and 510.

Page 561 is a record of an interview with the appellant, concerning a letter written by the appellant. There is no mention of anything being confiscated, nor is page 561 itself a confiscated item. The Ministry has not addressed page 561 directly in its representations respecting section 14(1)(h). In the absence of evidence to indicate that this record reveals a record which was confiscated, I find that the exemption in section 14(1)(h) does not apply.

ISSUE C: Whether the records qualify for exemption under section 14(1)(e) of the Act.

The Ministry submits that section 14(1)(e) of the Act applies to the records. This section reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > endanger the life or physical safety of a law enforcement officer or any other person;

The words "could reasonably be expected to" in section 14(1) were considered by Commissioner Tom Wright in Order 188 as follows:

> ... It is my view that section 14 of the Ontario Act ... requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason. An institution relying on the section 14 exemption, bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm(s) by virtue of section 53 of the Act.

In its representations, the Ministry states:

> Due to the nature of the information contained in this occurrence report the Ministry felt that disclosure of this record could reasonably be expected to endanger the life and safety of our correctional staff.

Apart from simply stating that disclosure of the records at issue could reasonably be expected to endanger correctional staff, the Ministry has provided no evidence to support its position, nor is there anything on the face of the records which could connect their disclosure to a reasonably foreseeable harm to the correctional staff or any other person. In my view, the Ministry has not established that the exemption in section 14(1)(e) applies to the records.

ISSUE D: Whether the records qualify for exemption under section 14(2)(d) of the Act.

The Ministry has also claimed the exemption in section 14(2)(d) with respect to the records at issue. Section 14(2)(d) of the Act reads as follows:

> A head may refuse to disclose a record,
>
> > that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

In Order 98, former Commissioner Sidney B. Linden considered the interpretation of section 14(2)(d) as follows:

> In my view, the purpose of subsection 14(2)(d) is to allow an **appropriate level of security** with respect to the records of individuals in custody. [emphasis added]

I agree with former Commissioner Linden. At its broadest, the wording of section 14(2)(d) could be interpreted to deny an individual in custody access to virtually all of his or her own personal information. In my view, the overall purposes of the Act should be considered in interpreting this exemption. Section 1(a) of the Act provides the right of access to information under the control of institutions in accordance with the principle that information should be available to the public and that necessary exemptions from this general right of access should be limited and specific. When an individual is seeking access to his or her own personal information, this principle is particularly important.

In this appeal, the Ministry in its representations has stated with respect to section 14(2)(d):

> the record contained detailed information regarding the custody, care and control of inmates, as well as procedures, techniques and security issues related to the supervision of persons under the control of the Ministry of Correctional Services.
>
> ... the occurrence reports can be considered to be a correctional record under 14(2)(d), with the result that the release of the record could affect the level of security at the institution.

The Ministry has referred to "procedures, techniques and security issues" which it claims are contained in the records at issue. Pages 486 and 510 refer to items which were confiscated. The procedures and techniques referred to are the execution of a search warrant and a search and seizure of contraband within a correctional facility. The records themselves do not describe in any detail how these searches were conducted and, in my view, disclosure of these records would not hinder or compromise effective execution of search warrants, or utilization of search procedures or techniques within correctional facilities.

Page 561 is a record of an interview with the appellant following an allegation that he had committed a misconduct. The Ministry has not identified how disclosure of this record could affect the security of the Whitby Jail and, in my view, the records do not contain reference to an investigative or security procedure.

In my view, the records do not contain sufficient detail regarding the history, supervision or release of the appellant or any other individual under the control or supervision of a correctional authority to attract the application of the exemption. Accordingly, I find that section 14(2)(d) does not apply.

Because I have found that the records do not qualify for exemption pursuant to sections 14(1)(e), 14(1)(h) or 14(2)(d), it is not necessary for me to consider Issue E.

ORDER:

1. I order the Ministry to disclose pages 486, 510 and 561 to the appellant within 15 days of this order.

2. To verify compliance with the order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1 of this order, **only** upon my request.

Original signed by: May 14, 1993
Holly Big Canoe
Inquiry Officer