



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

ORDER P-588

Appeal P-9200389

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 all information pertaining to the requester and his employment at the Toronto Jail. The Ministry granted partial access to the records, with exemptions pursuant to sections 14(1)(b), 20 and 49(b) of the Act. The requester appealed the Ministry's decision.

During the course of mediation duplicate records were identified and removed. The Ministry revised its decision indicating that access was granted to additional parts of the records and it was now relying on sections 14(1)(d), 14(1)(k), 20, 21(1) and 49(b) of the Act to deny access to the remaining portions of the record.

Further mediation of the appeal was not possible and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Representations were received from the Ministry only. In its representations, the Ministry indicated that access had been granted to additional records.

RECORDS AT ISSUE:

The records remaining at issue in this appeal are:

- Record 1: Notes to file from the Deputy Superintendent of the Toronto Jail regarding a telephone call with the appellant (page 7 through 11) denied entirely pursuant to section 20;
- Record 2: Notes from the Superintendent of the Toronto Jail regarding a meeting with the appellant (page 12 through 14) denied entirely pursuant to section 20;
- Record 3: Occurrence report submitted to the Superintendent of the Toronto Jail by a Correctional Officer (page 26) denied entirely pursuant to sections 14(1)(d) and 14(1)(k).

ISSUES:

- A. Whether the records contain "personal information" as defined in section 2(1) of the Act.
- B. Whether Records 1 and 2 qualify for exemption under section 20 of the Act.
- C. Whether Record 3 qualifies for exemption under section 14(1)(d) of the Act.

- D. Whether Record 3 qualifies for exemption under section 14(1)(k) of the Act.
- E. If the answer to Issue A and Issues B, C and/or D is yes, whether the discretionary exemption provided by section 49(a) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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

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

"personal information" means recorded information about an identifiable individual ...

Having reviewed the records, I am satisfied that they all contain information which qualifies as the personal information of the appellant.

During mediation, the appellant indicated in a letter to this office that he was not seeking access to the personal information of other individuals. I find that Records 1 and 2 contain some personal information related to other individuals. Accordingly, these parts of Records 1 and 2 are not at issue in this appeal.

ISSUE B: Whether Records 1 and 2 qualify for exemption under section 20 of the Act.

Section 20 of the Act reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The purpose of section 20 is to provide the Ministry with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to seriously threaten the safety or health of an individual. The Ministry bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm.

The Ministry submits that disclosure of Record 1 to the appellant would constitute a genuine threat to the safety of its author. The record outlines a telephone conversation between the author and the appellant and details the author's interpretation of the appellant's behaviour during the telephone call. The Ministry submits that disclosure of this record could provoke the appellant into taking retaliatory action against its author.

The Ministry submits that the author of Record 2 believes, based on the past behaviour of the appellant, that disclosure of her notes to the appellant may jeopardize the safety of another individual.

Section 20 requires that there exist a reasonable expectation of serious harm. The mere possibility of harm is not sufficient. At a minimum, the Ministry must establish a clear and direct linkage between the disclosure of the information and the harm alleged.

Having carefully considered the contents of Records 1 and 2 and the representations of the Ministry, in my view, the Ministry has not provided sufficient evidence to establish a clear and direct linkage between disclosure of the records and a **serious** threat to the safety or health of an individual. Accordingly, I find that Records 1 and 2 do not qualify for exemption under this section.

ISSUE C: Whether Record 3 qualifies for exemption under section 14(1)(d) of the Act.

Section 14(1)(d) states:

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

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

In order to qualify for exemption under section 14(1)(d), the matter which gave rise to the records at issue fall within the definition of "law enforcement". These words are defined in section 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);

The Ministry submits that it has within its mandate the function of enforcing and regulating compliance with the law. The Ministry references its authority to enforce a warrant of committal, apply varying degrees of discipline governing inmate conduct, initiate charges of

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non-compliance with a probation order, issue a warrant of apprehension and committal in the case of a parole violator, and grant or revoke temporary absence privileges.

I accept that the Ministry has a law enforcement function. Having reviewed the record, however, I am not satisfied that the matter which gave rise to the record at issue falls within the definition of "law enforcement" as it appears in the Act. The record relates to the conduct of an employee and, in my view, the Ministry was not in a position to enforce or regulate compliance with any law in relation to this matter. Accordingly, I find that Record 3 does not qualify for exemption under section 14(1)(d) of the Act.

ISSUE D: Whether Record 3 qualifies for exemption under section 14(1)(k) of the Act.

Section 14(1)(k) states:

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

jeopardize the security of a centre for lawful detention;

In its representations, the Ministry states that disclosure of Record 3 may reasonably be expected to put its author at risk of reprisal from inmates should they be reincarcerated at the Toronto Jail and have knowledge of the content of the report.

In my view, the exceptions to access set out in section 14(1) of the Act require that there exist a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the institution must establish a clear and direct linkage between the disclosure of the information and the harm alleged.

I have examined Record 3 as well as the representations of the Ministry and I am not satisfied that the Ministry has provided me with sufficient evidence to establish that, in the circumstances of this appeal, disclosure of the record could reasonably be expected to jeopardize the security of a centre for lawful detention. Accordingly, in my view, Record 3 does not qualify for exemption under section 14(1)(k).

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

As I have determined that the answer to Issues B, C and D is no, it is not necessary for me to consider this issue.

ORDER:

1. I order the Ministry to disclose Records 1, 2 and 3 to the appellant with the exception of the portions of Records 1 and 2 which are highlighted in the copy of the records which is being forwarded to the Ministry with this order, within 15 days following the date of this order.
2. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, only upon request.

Original signed by:
Holly Big Canoe
Inquiry Officer

November 29, 1993