



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

ORDER P-659

Appeal P-9300601

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 information relating to an investigation by the Office of the Police Complaints Commissioner (PCC). The investigation, which was initiated by the requester, related to a complaint about the conduct of three named police officers. The PCC granted access to 77 pages of responsive records but withheld from disclosure a four-page case summary. The decision not to release this document was based on the exemptions contained in sections 13(1) and 14(2)(a) of the Act. The requester appealed the denial of access to this record.

During the mediation stage of the appeal, the Ministry reconsidered its decision and disclosed the first three pages of the case summary. The Ministry continued to deny access to the fourth page of the record under sections 13(1) and 14(2)(a) of the Act. The Ministry did not claim the application of section 49(b) of the Act to the record.

Notice that an inquiry was being conducted to review the decision of the Ministry was sent to the Ministry and to the appellant. Representations were received from the Ministry only.

ISSUES:

- A. Whether the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- B. Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to the record.
- C. If the answer to Issues A and B is yes, whether the discretionary exemption provided by section 49(a) of the Act applies to the personal information contained in the record.

SUBMISSIONS/CONCLUSIONS:

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

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual ...". I have examined that portion of the record which remains at issue and find that it contains the personal information of the appellant and three other identifiable individuals.

ISSUE B: Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to 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 200, Commissioner Tom Wright stated:

In my view, 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.

The word "report" is not defined in the Act. However, it is my view that in order to satisfy the first part of the test i.e. to be 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.

For the purposes of this appeal, I adopt the approach taken by Commissioner Wright in Order 200.

The record at issue in this appeal is the final page of a document entitled "Case Summary". It was prepared by an Investigator employed by the PCC and contains the conclusions which she has reached on each of the five allegations made by the appellant, as well as a recommendation to the Police Complaints Commissioner.

I will now analyze this record based on the three part test set out above.

Part 1 of the Test

I am satisfied that the record qualifies as a "report" within the meaning of section 14(2)(a) of the Act as it represents the end result of a collation and consideration of the factual information compiled by the PCC's investigator.

Part 2 of the Test

I must now determine if an investigation undertaken by the PCC qualifies as a "law enforcement investigation" within the meaning of section 14(2)(a) of the Act.

The term "law enforcement" is defined in section 2(1) of the Act as:

- (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 Ministry claims that the PCC has the statutory authority to call a Board of Inquiry to adjudicate on the substance of allegations of police misconduct. The Board of Inquiry is empowered under the Police Services Act to impose penalties or sanctions on officers found to have engaged in unlawful conduct.

The Ministry indicates and I accept that the investigation which resulted in the creation of the record at issue could have led to a Board of Inquiry hearing and possible penalties or sanctions against the officers named in the complaint. Accordingly, I find that the second part of the test has been met as the report was prepared in the course of a law enforcement investigation.

Part 3 of the Test

In Order P-416, Assistant Commissioner Tom Mitchinson addressed the application of section 14(2)(a) of the Act to a number of records created by the PCC. He stated that:

In my view, in order for a record created by the PCC to qualify for consideration under either sections 14(1) or (2) of the Act, the PCC must establish that it has a law enforcement mandate ...

The record at issue in this appeal relates directly to the PCC's mandate to investigate possible infractions of the Police Services Act. I also find that, for the purposes of section 14(2)(a), the PCC qualifies as a "law enforcement tribunal" which has the function of enforcing compliance with a law, in particular, the Police Services Act. Accordingly, in my view, the third part of the test for the application of section 14(2)(a) has been satisfied.

To summarize, I have found that the record at issue qualifies as a "report" and that it was prepared in the course of a law enforcement investigation by a tribunal with the function of enforcing compliance with the Police Services Act. As all of the requirements of the test enunciated by Commissioner Wright in Order 200 have been met, I find that the record qualifies for exemption under section 14(2)(a) of the Act.

ISSUE C: If the answer to Issues A and B is yes, whether the discretionary exemption provided by section 49(a) of the Act applies to the personal information contained in the record.

In Issue A, I found that the record at issue contains the personal information of the appellant and other identifiable individuals. In Issue B, I found that the record at issue qualifies for exemption under section 14(2)(a) of the Act.

Section 49(a) of the Act provides an exception to the general rule that a requester has a right of access to his or her personal information in the custody or control of an institution. Section 49(a) states:

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]

Section 49(a) provides the head with the discretion to refuse to disclose to the appellant his own personal information where section 14 applies. In any case in which the head has exercised discretion under section 49(a) I look very carefully at the manner in which the head has exercised this discretion. Provided that this discretion has been exercised in accordance with established legal principles, in my view, it should not be disturbed on appeal.

In reviewing the head's exercise of discretion in favour of refusing to disclose the final page of the record, I have found nothing to indicate that the exercise of discretion was improper, and will not alter this determination on appeal.

ORDER:

I uphold the Ministry's decision to deny access to the record at issue.

Original signed by: _____

Donald Hale
Inquiry Officer

_____ April 20, 1994