



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

# ORDER P-999

Appeal P-9500275

Ministry of the Solicitor General and Correctional Services



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request for access to information relating to funding provided by the Ministry to "Project Guardian", an investigation undertaken by the London Police Force into an alleged child pornography ring. The Ministry identified a twenty-one page document entitled "Operational Plan and Approvals for a Joint Forces Operation" as being responsive to the request and denied access to it, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 14(1)(a), (b), (c) and (g)
- right to a fair trial - section 14(1)(f)
- facilitate commission of an unlawful act - section 14(1)(l)

The requester appealed the decision to deny access.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties. Following the submission of its representations and as a result of the decision in Order P-948, the Ministry agreed to disclose to the appellant certain portions of the record at issue. In Order P-948, the Ministry was ordered to disclose a record containing information about the financial arrangements which it had entered into with the London and Metropolitan Toronto Police Forces for the operation of Project Guardian. As the record sought in this appeal also relates to the financing of Project Guardian, I will rely on the reasoning set forth in Order P-948 in much of this decision.

In its representations, the Ministry did not address the application of section 14(1)(l) to the record. I will not, therefore, address this exemption in this order.

## **DISCUSSION:**

### **LAW ENFORCEMENT**

Sections 14(1)(a), (b), (c) and (g) of the Act state:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

In order for a record to qualify for exemption under these sections, the matter to which the record relates must first satisfy the definition of "law enforcement". This term is defined in section 2 of the Act as follows:

- (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).

I find that the matter to which the record relates satisfies the definition of "law enforcement" as it concerns a police investigation into possible violations of the Criminal Code. In addition, I am satisfied that the investigation by the Police which is the subject of the record is on-going.

The Ministry has made extensive representations on the issue of the correct interpretation to be given to the phrase "could reasonably be expected to" which is contained in the preamble to section 14. It urges that I adopt the test enunciated by then Assistant Commissioner Tom Wright in Order 188 which requires that the expectation of harm not be "fanciful, imaginary or contrived, but one that is based on reason." In Order P-948, Inquiry Officer John Higgins adopted the test stated in Order 188 and added that "there must be some logical connection between disclosure and the potential harm which the Ministry seeks to avoid by applying the exemption." I will decide this appeal based on this interpretation of the phrase "could reasonably be expected to."

#### **Sections 14(1)(a) and (b)**

The Ministry submits that the undisclosed information contained in Pages FI0003 and FI0004 refer to pending law enforcement matters and investigations relating to Project Guardian. I find that the disclosure of those portions of Pages FI0003 and FI0004 which relate to arrests made and evidence already seized could not reasonably be expected to result in interference with the Police investigation. This information has been the subject of extensive publicity, much of it in the form of press releases from the investigating police force. Other information, however, refers directly to pending actions which will be undertaken by the Police. I find that the disclosure of this information could reasonably be expected to interfere with the Project Guardian investigation. I have highlighted in yellow on the copy of these pages provided to the Ministry's Freedom of Information and Privacy Co-ordinator those portions of Pages FI0003 and FI0004 which are exempt under sections 14(1)(a) and (b). The highlighted portions should **not** be disclosed.

#### **Section 14(1)(c)**

**{ IPC ORDER P-999 / SEPTEMBER 12, 1995 }**

The Ministry submits that the disclosure of information contained in Pages FI0010, FI0016, FI0017 and FI0018 relating to cellular communications, mobile radios and the allocation of staff to the investigation could reasonably be expected to reveal investigative techniques, thereby hampering the investigation.

In Order 170, Inquiry Officer John McCamus articulated a test for the application of section 14(1)(c) as follows:

In order to constitute an "**investigative technique or procedure**" it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that a particular technique or procedure is generally known to the public would normally lead to the conclusion that such compromise would not be effected by disclosure and accordingly that the technique or procedure in question is not within the scope of section 14(1)(c).

I have reviewed the undisclosed information and find that it is generally known to the public that the Police use encrypted cellular and radio communications. The disclosure of this fact could not reasonably be expected to reveal an investigative technique. Accordingly, I find that this information is not exempt under section 14(1)(c). Further, I find that there does not exist a logical connection between the disclosure of the number and identities of personnel assigned to the investigation and the revealing of an investigative technique or procedure. This information is not, therefore, exempt under section 14(1)(c).

### **Section 14(1)(g)**

The Ministry submits that the disclosure of the information severed on Pages FI0007 and FI0011 could reasonably be expected to interfere with the gathering of or reveal law enforcement intelligence information respecting the investigation. Because of the nature of the information, I am unable to discuss it in detail in this order. I find that the Ministry has established a logical connection between the disclosure of the information contained in Pages FI0007 and FI0011 and interference with the gathering of law enforcement intelligence information as provided by section 14(1)(g). I have highlighted in yellow on the copy provided to the Ministry's Freedom of Information and Privacy Co-ordinator those portions of Pages FI0007 and FI0011 which are exempt from disclosure.

### **RIGHT TO A FAIR TRIAL**

Section 14(1)(f) states:

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

- (f) deprive a person of the right to a fair trial or impartial adjudication.

The Ministry submits that the disclosure of parts of Pages FI0004, FI0005 and FI0007 could reasonably be expected to prejudice the trials of those individuals who have been charged or who will be charged in the future and have not yet appeared before the courts.

In my discussion of section 14(1)(a), I found certain portions of Pages FI0004 and FI0007 for which section 14(1)(f) has also been claimed to be exempt from disclosure. I have carefully reviewed the submissions of the Ministry and the information which it seeks to withhold. I find that the disclosure of a statement on Page FI0004 relating to anticipated pleas by some of the accused and other statements about the nature of the accused persons, the victims and some health-related concerns on Page FI0005 could reasonably be expected to deprive one or more of the individuals who are the subject of the investigation of the right to a fair trial. These statements, if made public, could reasonably be expected to result in an impartial trial for the accused persons.

I find, therefore, that the Ministry has made out a causal connection between the disclosure of this information and the harm alleged. I have highlighted in yellow on the copy which I have provided to the Ministry's Freedom of Information and Privacy Co-ordinator those portions of Pages FI0004 and FI0005 which are properly exempt from disclosure under section 14(1)(f).

By way of summary, I have found that the highlighted portions of Pages FI0003, FI0004, FI0005, FI0007 and FI0011 are exempt from disclosure. These parts of the record should **not** be disclosed.

## **ORDER:**

1. I uphold the Ministry's decision not to disclose those portions of Pages FI0003, FI0004, FI0005, FI0007 and FI0011 which I have highlighted on the copy provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Ministry to disclose to the appellant the remaining portions of the record which have not been highlighted within twenty-one (21) days of the date of this order.
3. In order to verify compliance with Provision 2 of this order, I reserve the right to require the Ministry to provide me with a copy of the information which is disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ September 12, 1995