



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

ORDER P-1065

Appeal P-9500504

Ministry of Municipal Affairs and Housing



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Municipal Affairs and Housing (the Ministry), received a request for a copy of the audit, or audits, related to a named non-profit housing project in the City of Toronto. The request also included any documents related to the audit, including correspondence to and from the Ministry.

The Ministry identified 319 pages of responsive records, including the audit report; letters; memoranda; meeting minutes; financial statements and other related financial/business documents; e-mail messages; and other internal, inter-governmental and external documents, correspondence and reports, some in draft form. The Ministry relied on the following exemption to deny access to all records in their entirety:

- law enforcement - section 14(1)(b)

The requester appealed the Ministry's decision and claimed that a compelling public interest exists in the disclosure of the records. During mediation, the Ministry identified 419 pages of additional similar records, all of which were exempted by the Ministry under the same section of the Act.

A Notice of Inquiry was provided to the Ministry and the appellant. Because the records appeared to contain personal information, the Notice raised the possible application of section 21 of the Act, and was sent to six individuals whose interests may be affected by the disclosure of some of the information contained in the records (the affected persons). Representations were received from the Ministry, the appellant and one of the affected persons.

In its representations, the Ministry raised the possible application of the mandatory exemption under section 17(1) of the Act (third party information), but failed to identify the third party and provided no representations as to why this exemption applies. Because of the way in which I will dispose of the issues in this appeal, it will not be necessary for me to address this exemption claim.

DISCUSSION:

LAW ENFORCEMENT

Section 14(1)(b) of the Act provides:

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

interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

The Ministry has claimed that this exemption applies to all 738 pages of records.

In order for a record to qualify for exemption under section 14(1)(b), the matter to which the records relate must first satisfy the definition of the term "law enforcement", found in section 2(1) of the Act. In this case, the Ministry has established that an investigation has been undertaken by the Ontario Provincial Police (the O.P.P.). I find that this type of policing activity clearly satisfies the definition of law enforcement.

The purpose of section 14(1)(b) is to provide an institution with the discretion to preclude access to records in circumstances where disclosure could reasonably be expected to interfere with an **ongoing** law enforcement investigation. The Ministry bears the onus of providing sufficient evidence to establish the reasonableness of the expected harm.

The section 14(1)(b) exemption is time sensitive and is only available if an investigation is ongoing. Once a law enforcement investigation has been completed, it is not possible for an institution to rely on this section as the basis for denying access.

This appeal turns on the question of whether the O.P.P. investigation is ongoing. The appellant submits that the investigation was completed a number of years ago, and that the Ministry has been unable to show proof that it continues to be ongoing. The Ministry submits that the investigation remains active and supports its position with the following evidence.

On May 11, 1992, the O.P.P. was provided with information relating to specific concerns expressed about the non-profit housing project. On April 23, 1993, the O.P.P. received a copy of the Ministry's audit of the housing project, dated April 15, 1993, and were asked to review the matter and determine if any action should be taken. The O.P.P. returned the records to the Ministry on May 3, 1994 on the understanding that the Ministry would conduct further inquiries and return the matter to the O.P.P. if additional concerns were identified. On August 15, 1995, having compiled additional information, the records were returned to the O.P.P., with a request that a meeting occur to discuss all identified issues. A meeting took place between the O.P.P. and Ministry staff on September 26, 1995. In its representations, the Ministry states that a course of action was agreed upon at this meeting, and that the O.P.P. investigation remains active at this time.

Based on my review of the records and the evidence provided by the Ministry, I find that the O.P.P. is still involved in this matter, and the investigation remains ongoing. I also find that disclosure of the records while this investigation is in progress could reasonably be expected to interfere with the ongoing law enforcement investigation. Therefore, the records qualify for exemption under section 14(1)(b) of the Act. However, because of the nature of the section 14(1)(b) exemption, once the O.P.P.'s investigation has been completed this exemption will cease to apply.

Because I have found all records to be exempt under section 14(1)(b), it is not necessary for me to consider the provisions of section 17 and/or 21 of the Act.

The appellant's representations make reference to the public interest in disclosure of the information to which access was denied. This raises the possible application of the "public interest override" in section 23 of the Act. This section states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

The law enforcement exemption provided by section 14 of the Act is not one of the sections mentioned in section 23. Therefore, section 23 cannot apply to override this exemption.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

November 28, 1995