



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

# **ORDER P-1020**

## **Appeal P-9500081**

### **Ministry of the Solicitor General and Correctional Services**



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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 the Solicitor General and Correctional Services (the Ministry) received a request for all documents pertaining to alleged communications between the appellant and a named government official, as well as to any Ontario Provincial Police (OPP) investigation records into the allegations.

The Ministry identified a two-page document as the record responsive to the request and denied access to it in its entirety on the basis of the following exemptions contained in the Act:

- law enforcement - sections 14(1)(a) and (g)
- endanger life or safety - section 14(1)(e)
- law enforcement report - section 14(2)(a)
- discretion to refuse access to requester's own information - section 49(a)
- invasion of privacy - section 49(b)

The appellant appealed the Ministry's decision. A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from the Ministry only.

## **DISCUSSION:**

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT REPORT**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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 the record which describes allegations made against the appellant and a subsequent investigation into these allegations. I find that it contains the personal information of the appellant as well as that of other identifiable individuals.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the Act, the Ministry has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include the law enforcement exemption provided by section 14, which includes section 14(2)(a)(law enforcement report). The Police claim that the record is exempt because it qualifies for exemption under section 14(2)(a).

Deciding whether the record qualifies for exemption under this section is a preliminary step in determining whether the exemption in section 49(a) applies.

In order for a record to qualify for exemption under section 14(2)(a), the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act.

"Law enforcement" is defined in section 2 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).

The Ministry submits that the record falls within the first two parts of this definition. The Ministry indicates that the Police Services Act provides the primary statutory basis for the existence of the OPP, its composition, authority, jurisdiction and other pertinent matters. Pursuant to section 19 of the Police Services Act, the OPP is responsible for providing police services in respect of the parts of Ontario that do not have municipal police forces other than by-law enforcement officers. The record itself relates to the OPP's involvement with certain matters concerning the appellant. Accordingly, I find that the law enforcement element of section 14(2)(a) has been satisfied.

In addition, for a record to qualify for exemption under section 14(2)(a) of the Act, the Ministry 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.

[See Order 200 and Order P-324 and Order 200]

In Order 221, Commissioner Tom Wright made the following comments about part one of the test:

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.

I agree with this approach and will apply it to the record at issue in this appeal. The record describes the incidents which lead to the involvement of the OPP, the actions they took, the results of these actions and a consideration of the resolution of the matter. On this basis, I find that the record constitutes a "report" for the purposes of section 14(2)(a) of the Act.

I also find that the report was prepared in the course of a law enforcement matter by the OPP, an agency which has the function of enforcing and regulating compliance with a law, in this case, the Criminal Code. Thus parts two and three of the test have been met and the record qualifies for exemption under section 14(2)(a) of the Act.

Having found that the record contains the personal information of the appellant and qualifies for exemption under section 14(2)(a), I find that it is exempt from disclosure under section 49(a).

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ October 11, 1995