



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

# **ORDER P-1028**

**Appeal P-9500252**

**Ministry of the Attorney General**



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/Téléco: 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 appellants, a husband and wife, submitted a request for information to the Police Complaints Commissioner (the PCC). The request was for access to information pertaining to two specified complaints filed with the PCC by the appellants.

The Ministry of the Attorney General (the Ministry) responded to this request on behalf of the PCC. The Ministry granted access to several responsive records but denied access to two others.

The appellant filed an appeal from this denial of access. During mediation, access was granted to one of the records initially denied, with a small deletion which the appellants have agreed to accept. Accordingly, only the other undisclosed record is at issue in this appeal. The record at issue consists of a memorandum in which the PCC investigator outlines the information she collected, and her conclusions, with respect to the appellants' allegations of police misconduct.

Access was denied to the record at issue pursuant to the following exemptions in the Act:

- discretion to deny requester's own information/law enforcement - sections 49(a) and 14(2)(a).

The Commissioner's office sent a Notice of Inquiry to the appellant and the Ministry. This notice identified the issues in the appeal and invited the parties to make representations. Both the Ministry and the appellants submitted representations.

The sole issue for me to determine is whether to uphold the Ministry's denial of access under sections 49(a) and 14(2)(a).

## **DISCUSSION:**

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

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 and I find that it contains the personal information of the appellants and several other 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 institution has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that

information. One of the exemptions mentioned in section 49(a) is section 14.

Accordingly, as a preliminary step in deciding whether or not section 49(a) applies, I will consider whether the record qualifies for exemption under section 14(2)(a).

That section 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 for a record to qualify for exemption under this section, 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.

That definition reads 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 the investigation referred to in this record was conducted under the Police Services Act (the PSA). I accept this submission. Based on the provisions of the PSA, I am satisfied that this investigation could have led to proceedings in a court or tribunal in which sanctions could be imposed, and therefore the definition of “law enforcement” has been met.

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

Because the record represents a formal statement or account of the results of the collation and consideration of information, I find that it qualifies as a “report” (Order 200). Thus, Part 1 of the test has been met.

I am also satisfied that the record was prepared in the course of the investigation into the appellants’ complaints, which I have found to qualify under the definition of “law enforcement”, above. Accordingly, Part 2 of the test has been met.

It is clear from the PSA that this investigation was within the mandate of the PCC. Moreover, the PCC has the function of enforcing and regulating compliance with the PSA. Therefore, Part 3 of the test has also been met.

I find that the Ministry has met the requirements for exemption under section 14(2)(a). Accordingly, I find that the record is exempt under section 49(a).

I have reviewed the representations submitted by the appellants and I am of the view that the matters they have raised do not affect the application of either section 14(2)(a) or section 49(a).

**ORDER:**

I uphold the Ministry’s decision.

Original signed by: \_\_\_\_\_

John Higgins  
Inquiry Officer

\_\_\_\_\_  
October 19, 1995