



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1109

Appeal P-9500561

Ministry of Consumer and Commercial Relations



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NATURE OF THE APPEAL:

The Ministry of Consumer and Commercial Relations (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to five categories of information related to the Ministry's administration of the Bailiffs Act. During the course of a fee appeal related to one of the categories, the requester advised the Ministry that he was limiting the scope of that portion of his request to any "reports or summaries of investigations of bailiffs". This is the subject of this order.

The Ministry advised the requester that it located 14 investigation files. As two files were still open, no report or summary of the investigation had been prepared. The Ministry explained to the requester why no report or summary of the investigation existed for four of the remaining 12 files. The Ministry did identify a report or summary/closing document for the remaining eight files and denied access to these documents on the basis of the following exemptions in the Act:

- law enforcement - section 14(1)(d)
- law enforcement report - section 14(2)(a)
- invasion of privacy - section 21

The requester appealed the denial of access. During the course of the appeal, he raised the issue of the application of section 23 of the Act, the so-called "public interest override".

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from the Ministry only.

DISCUSSION:

LAW ENFORCEMENT REPORTS

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 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. This term is defined 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 states that the records all relate to investigations that were conducted in response to complaints to determine if there had been a violation of the Bailiffs Act. The Ministry has explained that if a violation of this legislation is confirmed, a prosecution may be commenced in the Ontario Court (Provincial Division). Contravention of the Bailiffs Act may result in a fine of not more than \$5000. In addition, the bailiff's appointment may be revoked.

I accept these submissions and find that the records relate to the Ministry's law enforcement mandate with regard to bailiffs.

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.

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 records at issue in this appeal. The records describe the reasons why the investigations were initiated, the summaries of the investigations, findings of fact, conclusions and recommendations. On this basis, I find that the records constitute "reports" for the purposes of section 14(2)(a) of the Act, meeting part one of the test.

I also find that the reports were prepared in the course of a law enforcement matter by the Ministry, an agency which has the function of enforcing and regulating compliance with a law, in this case, the Bailiffs Act. Thus parts two and three of the test have been met and the records qualify for exemption under section 14(2)(a) of the Act.

COMPELLING PUBLIC INTEREST IN DISCLOSURE

As I have indicated, the appellant has raised the issue of the application of section 23 of the Act which 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.

This section does not apply to records which are exempt under section 14 of the Act. As I have found that all the records are law enforcement reports pursuant to section 14(2)(a), I cannot consider whether section 23 has any application.

Because of the manner in which I have addressed these issues, I need not consider the applications of sections 14(1)(d) or 21 of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____

Anita Fineberg
Inquiry Officer

January 29, 1996