



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

ORDER P-1150

Appeal P-9500620

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records in the Office of the Fire Marshal relating to a fire at a business owned by the requester's clients. For the sake of clarity, I will refer to the clients as the requester and appellant in this order. The Ministry located and identified a videotape, sets of blueprints and 358 pages of documents as responsive to the request and denied access to them in their entirety, relying on the following exemptions contained in the Act:

- law enforcement - sections 14(1)(a) and (b) and 14(2)(a)
- right to a fair trial - section 14(1)(f)
- invasion of privacy - sections 21 and 49(b)
- right to refuse requester's own personal information - section 49(a)

The requester (now the appellant) appealed the decision to deny access. During the mediation of the appeal, the appellant was granted access to the blueprints and withdrew his request for access to the videotape. The records remaining at issue consist of 358 pages of interview notes, reports, correspondence and other documents relating to the fire investigation.

A Notice of Inquiry was provided to the appellant, the Ministry and to two other individuals whose interests may be affected by the disclosure of the records (the affected persons). Representations were received from the appellant and the Ministry. With his representations, the appellant provided signed consents to the disclosure of their personal information from the affected persons and several other individuals which may be contained in the records.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records to determine if they contain personal information and, if so, to whom that personal information relates. I find that the records contain the personal information of the appellant and the affected persons.

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), the Ministry has the discretion to deny access to an individual's own personal information where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include the law enforcement exemptions under sections 14(1)(a) and (b) and 14(2)(a) which the Ministry has claimed to deny access to the records.

LAW ENFORCEMENT

Sections 14(1)(a) and (b) 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;

In order for a record to qualify for exemption under either of these sections, 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 (Order P-324).

The Ministry submits that the records at issue document an investigation undertaken by the Office of the Fire Marshal (OFM) pursuant to section 3(h) of the Fire Marshals Act and the Metropolitan Toronto Police in connection with a fire which occurred at the appellant's place of business in December 1994. It further submits that OFM investigators are peace officers who are empowered to enforce the fire-related provisions of the Criminal Code, as well as conduct investigations into the cause, origin and circumstances of fires occurring in Ontario. In addition, the Ministry submits that OFM investigations may reveal possible violations of law relating to the Criminal Code or provincial and municipal offences. As a result, the Ministry submits that an investigation undertaken by the OFM under the Fire Marshals Act is a law enforcement investigation within the meaning of section 14(1) of the Act.

I find that the investigation to which the records relate pertain to the cause, origins and circumstances of a fire which may result in criminal charges being laid. As a result, it qualifies as a "law enforcement investigation" within the meaning of section 14(1)(b) of the Act.

The purpose of sections 14(1)(a) and (b) is to provide the Ministry with the discretion to preclude access to records in circumstances where their disclosure would interfere with an **ongoing** law enforcement matter or investigation.

The Ministry submits that it has been advised by the investigating officer with the Metropolitan Toronto Police that he submitted a supplementary occurrence report on this matter as recently as January 20, 1996. The Ministry also advises that the OFM investigator has not yet closed her file on the matter as she has not been notified by the Police that the investigation is fully completed.

The appellant, on the other hand, submits that he had a conversation with the investigating officer on February 6, 1996 at which time he was advised that "unless something else occurs, he has no basis to lay any charges". The appellant takes the position that this statement demonstrates that the investigation by the Police is no longer ongoing and has been concluded.

In my view, the fact that no charges have yet been laid or are currently contemplated is not determinative of the issue of whether the investigation remains ongoing. The OFM investigator has yet to be advised by the Police that the investigation has been closed and the investigating

Police officer has also left the door open to charges being laid at some future time should “something else occur”. I find, therefore, that the investigation of the subject matter of the records remains ongoing.

The Ministry describes in some detail the nature of the interference which it feels could reasonably be expected to result from the disclosure of the information contained in the records at issue. Because of the nature of the submissions made by the Ministry on this issue, I am unable to discuss them in any detail. I am satisfied, however, that interference with a law enforcement investigation could reasonably be expected to occur should the records be disclosed to the appellant. As a result, the records qualify for exemption from disclosure under section 14(1)(b) of the Act. I find, therefore, that the records are exempt under section 49(a) of the Act.

Because of the manner in which I have disposed of the records under sections 14(1)(b), it is not necessary for me to address the application of sections 14(1)(f), 21(1) or 49(b) to them.

ORDER:

I uphold the decision of the Ministry and dismiss the appeal.

Original signed by: _____

Donald Hale
Inquiry Officer

March 20, 1996