



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

ORDER P-1151

Appeal P-9500668

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Privacy Act (the Act) for access to the first three characters of the postal code of all individuals who sat on a jury in Metropolitan Toronto during 1994. The Ministry determined that no record responded directly to the request, but that the jury rolls in the possession of the sheriff contained information which could be compiled in a way which would create a responsive record.

Before formally responding to the request, the Ministry concluded that the Act did not apply to certain information obtained from jury rolls because of the constitutional doctrine of federal paramountcy. According to the Ministry, the only permitted disclosure of jury information in criminal matters was pursuant to section 20 of the Juries Act, which only allows for disclosure to the parties to the criminal proceedings and their counsel for a period of ten days before the commencement of a jury trial. The Ministry advised the requester that court rulings had characterized section 20 as a rule of criminal procedure that has been incorporated into the federal Criminal Code of Canada, and for constitutional reasons, the Act cannot permit disclosure which is otherwise restricted by federal law. The Ministry advised the requester that it would be possible to compile the requested information about jurors in civil trials, but the requester decided not to pursue this aspect of the request.

The requester (now the appellant) appealed the Ministry's decision. He acknowledged the privacy interests of the individual jurors, but maintained that because he was not requesting the names of jurors, the record was not covered by the Juries Act.

Mediation was not successful, and this office sent a Notice of Inquiry to the appellant and the Ministry. The assigned Appeals Officer identified the possible characterization of the records as so-called "court records", and invited the parties to make representations on the issue of custody and control in addition to the constitutional issue. Representations were received from the Ministry only.

DISCUSSION:

CUSTODY AND CONTROL

In Order P-994, Inquiry Officer Laurel Cropley determined that certain records fell outside the scope of the Act by virtue of their connection to judicial functions. As she stated at page 6:

In order for the judiciary to maintain its independence with respect to its adjudicative function, this must necessarily entail the ability to control those records which are directly related to this function. However, because of the administrative relationship of the Ministry ... the question remains, does the Ministry have custody and control over these records for the purposes of the Act.

Inquiry Officer Cropley considered the various indicia of custody and control outlined by former Commissioner Sidney B. Linden in Order 120, and went on to find that an "information" (a document used to initiate a criminal prosecution) in a court file was not within the custody or control of the Ministry, and therefore fell outside the scope of the Act.

Inquiry Officer John Higgins applied the reasoning from Order P-994 in Order P-1089, where he found that writs of seizure and sale in the possession of the sheriff were not in the custody or under the control of the Ministry for the purposes of the Act. After reviewing the storage and handling of these writs, Inquiry Officer Higgins made the following findings:

- (1) In issuing and dealing with writs of seizure and sale, the Registrar and the sheriff act as officers of the Court.
- (2) Writs of seizure and sale result from judgments of a court and remain under the court's overriding supervision while in the possession of the sheriff.
- (3) Despite the Ministry's administrative involvement with writs of seizure and sale, including the manner in which searches for them are conducted by members of the public, the Ministry does not have sufficient powers relating to the acquisition, retention and disposal of writs of seizure and sale by the sheriff to give it "control" over such writs in the hands of the sheriff.
- (4) The Ministry's possession of writs of seizure and sale in the hands of the sheriff is a "bare" possession, and does not include sufficient rights to deal with them to amount to "custody" for the purposes of the Act.

Based on these findings, Inquiry Officer Higgins concluded that the writs of seizure and sale fell outside the scope of the Act.

I will follow a similar process and apply the reasoning from Order P-944 and consider the indicia of custody and control outlined in Order 120 in determining whether the creation and management of the jury rolls prepared pursuant to the Juries Act is sufficiently tied to the judicial process to remove these records from the scope of the Act.

In its representations, the Ministry describes some of the duties of the sheriff as outlined in the Juries Act. The sheriff has statutory responsibility for preparing jury rolls. After a roll has been prepared by the sheriff at the central jury office, the statute requires the sheriff to certify the roll "to be the proper roll prepared as the law directs" and to deliver notice of the certification to a judge of the Ontario Court (General Division). The sheriff may seek the approval of the Chief Justice of Ontario for a time extension for preparing the jury roll.

Once a judge issues a precept indicating that a jury panel is required for specific trial dates, the sheriff from the central jury office randomly selects a list of individuals from the roll and mails a summons to each person on the list. Individual jury lists are administered by the relevant local sheriff, and management of the jury selection process is under judicial control.

The provincial jury office maintains the jury rolls for each county as a database in an automated system. The local sheriff maintains the individual jury lists and records of attendance and payment to jurors. The records management system for jury rolls requires rolls and lists to be retained for three years and then destroyed. This retention period is tied to the statutory

requirement in the Juries Act that deems individuals eligible for jury service only once in three years.

The Ministry submits that jury selection records in the possession of the sheriff, with the exception of records relating to the payment of jurors by the Ministry, are not in the custody or control of the Ministry. Because the information at issue in this appeal is drawn from the jury roll, the Ministry concludes that it is not in the Ministry's custody or control, and falls outside the scope of the Act.

Having reviewed the Ministry's representations, I make the following findings:

1. In preparing and administering the jury rolls, the sheriff acts as an officer of the Court.
2. The jury roll and other jury selection records are created pursuant to statutory authority, which includes supervision by the judiciary (e.g. the sheriff certifies the roll and delivers the notice of certification to a judge; jury panels are prepared by the sheriff when a judge issues a precept).
3. Despite the Ministry's administrative involvement in providing support to the sheriff, operating the jury roll database, and payment to jurors, the Ministry does not have sufficient powers with respect to the jury rolls to give it "control" over them.
4. The jury roll is required by statute, and the use and disclosure of the roll is governed by the terms of the Juries Act. The administration of the roll is the statutory responsibility of the sheriff in his capacity as an officer of the court, and the Ministry is not in a position to exercise control over the records.
5. Although the Ministry has possession of the jury roll, and the information contained in the roll in its automated database system, this information is not integrated with other records held by the Ministry, and Ministry staff do not have the right to deal with this information in a manner which would amount to "custody" for the purposes of the Act.

Accordingly, I find that the Ministry does not have custody or control of the jury rolls and that the information contained on these rolls falls outside the scope of the Act.

Because of this finding, it is not necessary for me to deal with the constitutional question.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____

March 20, 1996

Tom Mitchinson
Assistant Commissioner