



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

# **ORDER P-1244**

**Appeal P-9600195**

**Ministry of the Attorney General**



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## **NATURE OF THE APPEAL:**

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Attorney General (the Ministry). The appellant requested access to the “official report of the Special Investigations Unit (SIU)” relating to the death of a named psychiatric patient. The patient died after he was restrained by police with Oleoresin Capsicum (pepper spray). The Ministry denied access to the record pursuant to the following exemptions:

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

The requester appealed the Ministry’s decision. A Notice of Inquiry was sent to the Ministry and the appellant. As the appellant had raised the application of section 23 (public interest in disclosure), representations on this issue were invited via the Notice of Inquiry. Representations were received from the Ministry only.

## **DISCUSSION:**

### **LAW ENFORCEMENT REPORT**

The Ministry has denied access to the record on the basis of section 14(2)(a) of the Act, which 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 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.

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The record provides an overview of the incident surrounding the death of the patient and a description of the background and prior incidents involving the patient. The record describes the events occurring before and after the patient’s death and sets out the details of the investigation. Finally the record outlines the grounds of the Director’s decision and sets out the conclusion he reaches regarding the conduct of the police. In my view, the record consists of a formal account of the results of the consideration of the information related to the incident. On this basis, I find

that the record constitutes a “report” for the purposes of section 14(2)(a) of the Act, and part one of the test has been met.

The SIU is established by section 113 of the Police Services Act and is charged with the investigation of “... the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers” (section 113(5)). The Ministry states that, in the event of such an incident, an independent investigation is conducted by the SIU investigators with a view to determining whether any police officer may have committed a criminal offence in the circumstances. At the conclusion of the investigation, a brief is submitted to the Director for review and determination. If reasonable grounds exist, the Director may cause an information to be laid against a police officer in connection with the matters investigated and refer such an information to the Crown Attorney for prosecution. The Director is required to provide a report of the results of the investigation to the Attorney General (section 113(8)). It is such a report that is at issue in this case.

On the basis of the above, I find that the report was prepared in the course of a law enforcement investigation by the SIU, an agency which has the function of enforcing and regulating compliance with a law. 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.

Since I have found that the section 14(2)(a) exemption applies, it is not necessary for me to consider the application of section 21 of the Act. In addition, section 23 of the Act cannot operate to override an exemption under section 14 of the Act. Accordingly, section 23 does not apply and the record is properly exempt from disclosure.

**ORDER:**

I uphold the Ministry’s decision.

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

Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ August 20, 1996