



Information and Privacy
Commissioner/Ontario

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

ORDER P-1449

Appeal P_9700080

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General and Correctional Services (the Ministry). The request was for access to records relating to a natural gas explosion which occurred at a named property. The appellant was a tenant living at a neighbouring premises which was demolished, and she was also injured in the explosion.

The Ministry located records responsive to the request and denied access to them in full, based on the following exemptions under the Act:

- law enforcement - sections 14(1)(a) and 14(1)(b);
- right to fair trial - section 14(1)(f);
- invasion of privacy - section 21(1)

The appellant appealed the Ministry's decision.

This office sent a Notice of Inquiry to the appellant and the Ministry. As some of the records appeared to contain the personal information of the appellant, the Notice raised the possible application of sections 49(a) (discretion to refuse to disclose requester's own information) and 49(b) (invasion of privacy) of the Act. Representations were received from both parties. In its representations, the Ministry withdrew its reliance on the exemption in section 14(1)(f) and indicated that it relies on the exemption in section 49(b) rather than section 21(1).

The records at issue in this appeal consist of three documents:

1. "Office of the Fire Marshall (OFM), Major Occurrence Preliminary Information" (pages 1 to 3)
2. "Office of the Fire Marshall, Major Occurrence Preliminary Information" Update (pages 4 and 5)
3. Handwritten press release, dated August 1, 1996 (page 6).

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 and I find that Record 1 contains the personal information of the appellant and other identifiable individuals. Record 2 contains the personal information of individuals other than the appellant. In my view, Record 3 simply describes the event in a non-identifying manner, and, therefore, does not contain personal information. As a result, neither section 21(1) nor sections 49(a) or (b) are applicable to Record 3 in the circumstances.

DISCRETION TO REFUSE TO DISCLOSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT

Under section 49(a) of the Act, the Ministry has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. Section 49(a) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. [emphasis added]

The Ministry has exercised its discretion to refuse access to the records at issue under sections 14(1)(a) and (b). In order to determine whether the exemption provided by section 49(a) applies to the information in these records, I will first consider whether the exemptions in section 14 apply.

Although I have found that Records 2 and 3 do not contain the appellant's personal information, the analysis under section 14(1) is the same. Accordingly, I will also consider the application of section 14(1)(a) and (b) to these two records in my discussion of section 49(a).

These sections state:

A head may refuse to disclose a record if 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 sections 14(1)(a) or (b), the matter to which the records relate must first satisfy the definition of the term "law enforcement", found in section 2(1) of the Act, which states:

"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 records fall within the second part of the definition of “law enforcement”. In this regard, the Ministry indicates that the records at issue document the preliminary investigation undertaken by the OFM and the York Region Police Service in connection with the natural gas explosion and fire. The investigation undertaken by staff of the OFM was conducted pursuant to section 3(h) of the Fire Marshals Act (the FMA).

This section provides that:

Subject to the regulations and for the prevention and investigation of fire, it is the duty of the Fire Marshal and he has power

to investigate the cause, origin and circumstances of any fire so reported to him and so far as it is possible determine whether it was the result of carelessness or design.

The Ministry states that investigations undertaken by the OFM may reveal possible violations of law relating to federal Criminal Code offences, such as arson, and provincial and municipal offences, such as violations of the Fire Code and related municipal by laws.

In Order P-1150, which involved a request to access similar OFM records relating to an ongoing investigation, Inquiry Officer Donald Hale stated:

I find that the investigation to which the records relate pertain[s] 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....

I agree with these findings, and find that the records at issue in the appeal qualify as law enforcement records as defined in 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.

With respect to section 14(1)(a), the Ministry reiterates that disclosure of the record at issue would interfere with an active law enforcement matter/investigation undertaken by the OFM and the York Region Police Service with respect to the circumstances of the explosion and fire. The Ministry indicates that the law enforcement investigation is primarily focused on ascertaining the cause of the explosion and fire, as well as determining whether any person is criminally responsible.

With respect to section 14(1)(b), the Ministry submits that release of the records at issue would seriously interfere with an ongoing law enforcement investigation. In this regard, the Ministry asserts that public dissemination of the information in the records at this point in time could lead to the suppression or destruction of potential evidence and could alert a potential perpetrator (if it turns out to be arson) about the extent and nature of the evidence compiled by the OFM which could help such an individual to escape detection. The Ministry attached a file note from the

OFM investigator dated August 13, 1997, confirming that the investigation into the explosion and fire remains in progress.

The appellant indicates that she has commenced an action in the Ontario Court of Justice (General Division) to recover damages for her personal injuries and property loss resulting from the explosion and fire. She indicates that she has no intention of interfering with the investigation into the cause of the fire, but rather, only wishes this information in order to assist her in establishing liability against the person or persons responsible.

I have considered the representations of both parties and have reviewed the records at issue. In my view, disclosure of Records 1 and 2 at this time would interfere with the ongoing investigation into the cause of the explosion and fire. Accordingly, I find that sections 14(1)(a) and (b) and section 49(a) apply to exempt this information in Records 2 and 1, respectively, from disclosure.

In my view, the information in Record 3 (a handwritten press release) is information which is intended to be provided to the public. Further, I am not persuaded that the information regarding the matter which is outlined in this record would interfere in any way with the ongoing investigation into the cause of the explosion. Accordingly, neither sections 14(1)(a) nor (b) apply.

As no other exemptions are applicable to this record, it should be disclosed to the appellant.

Because of the findings I have made in this order, it is not necessary for me to consider the application of sections 21(1) and 49(b) to the remaining records.

ORDER:

1. I order the Ministry to disclose Record 3 to the appellant by sending her a copy of this record on or before **September 25, 1997**.
2. I uphold the Ministry's decision to withhold the remaining records.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ September 5, 1997