



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1527**

**Appeal P-9700283**

**Ministry of Labour**



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## **NATURE OF THE APPEAL:**

The Ministry of Labour (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to the investigation report relating to an industrial accident which occurred on July 4, 1996 and resulted in the death of a named individual (the deceased). The accident occurred at the premises of the company where the deceased was employed.

The Ministry denied access to the investigation report on the basis that disclosure may interfere with a law enforcement matter (section 14(1)(a)) and that the record is a law enforcement report (section 14(2)(a)). The Ministry's investigation has resulted in charges being laid against the former employer of the deceased (the employer) under the Occupational Health and Safety Act (the OHSA) and the trial is pending.

The requester appealed the decision to deny access to the report. The requester, now the appellant, represents the widow who is also the executrix of the estate of her husband. During mediation, the appellant explained that under the Worker's Compensation Act, his client is barred from pursuing civil action against the former employer of the deceased. However, the statute does not bar him from pursuing recourse against potential third parties who may have been involved and it is for this purpose that he is seeking access to the report.

The record at issue consists of the Ministry's Fatal Accident Investigation Report (24 pages) together with all appendices. The Investigation Report contains a listing and description of the appendices, which total 300 pages.

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties.

## **DISCUSSION:**

### **LAW ENFORCEMENT**

The Ministry claims that the record qualifies for exemption under sections 14(1)(a) and 14(2)(a) of the Act. I will first consider the application of section 14(2)(a), 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.

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, former Commissioner Tom Wright made the following comments about Part 1 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 the above definition. The record describes why the investigation was undertaken and contains a chronological summary of the investigation and inspection, including findings of fact and conclusions. The record also contains a complete listing and description of the appendices which form an integral part of the record and relate directly to the results of the collation and consideration of information. On this basis, I find that the record qualifies as a “report” for the purposes of section 14(2)(a) of the Act. The first part of the test has been met.

With respect to parts two and three of the test, I find that the record was prepared in the course of an investigation into an industrial accident conducted under the authority of the OHSA (Order P-1011). I also find that investigations under the OHSA are within the mandate of the Ministry and that it has the statutory authority to enforce and regulate compliance with the statute. I find that both the second and third parts of the test have been met. Accordingly, the record qualifies for exemption under section 14(2)(a) of the Act.

I have carefully reviewed the appellant’s representations and I empathize with his client’s position. However, the record is clearly exempt under section 14(2)(a) of the Act.

Section 14(2)(a) is a discretionary exemption which provides the head of an institution with the discretion to disclose the record even if it meets the test for exemption. I have reviewed the institution’s representations which outline the factors taken into account in exercising discretion to withhold access. The factors include the Ministry’s serious concerns that in view of the pending trial, disclosure of the record, at this time, may jeopardize the Ministry’s case. I find nothing improper in the exercise of this discretion and the decision should not be altered on appeal.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ February 4, 1998