Information and Privacy
Commissioner/Ontario

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

ORDER P-1567

Appeal P-9700344

Ministry of the Solicitor General and Correctional Services

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NATURE OF THE APPEAL:

The Ministry of Natural Resources (the MNR) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to information relating to an investigation, conducted in 1991 and 1992, by the MNR, the Ontario Provincial Police and the Quebec Provincial Police into the alleged non-payment of royalties on Crown Timber. The requester represents a forest products company.

The MNR identified 92 videotapes as the records responsive to the request and provided the requester with an index of the tapes. The requester narrowed the scope of the request to the 11 working tapes, which are a compilation of parts of the remaining tapes. The MNR then transferred the request to the Ministry of the Solicitor General and Correctional Services (the Ministry) on the basis that it had a greater interest in the records. The Ministry denied access to the tapes pursuant to the exemptions provided by sections 14(1) (law enforcement) and 21(1) (invasion of privacy) of the Act. The requester appealed the decision to deny access.

The records at issue consist of 11 videotapes.

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

DISCUSSION:

PERSONAL INFORMATION AND INVASION OF PRIVACY

The Ministry submits that the information in the records qualifies as personal information under clause 2(1)(b), which reads as follows:

> "Personal information" means recorded information about an identifiable individual including,
>
> > information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved.

The Ministry also states that certain company names may be identified from the videotape images and in this manner, the individuals associated with those companies may also be identified.

I have viewed the records and I find that the videotapes contain fuzzy images of various sized trucks and individuals. Some of the records are taped during the daytime and others at night. I find that nothing in these records could qualify as "recorded information about an **identifiable individual**". In addition, the name of a company does not qualify as "recorded information about an identifiable individual" (Orders 16 and 53). I find that the information in the records does not qualify as "personal information" for the purposes of section 2(1) of the Act. Consequently, I am unable to consider the application of section 21(1) of the Act to the records.

LAW ENFORCEMENT

Section 14(1)(c) of the Act states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > reveal investigative techniques and procedures currently in use or likely to be used in law enforcement.

In Order 188, former Commissioner Tom Wright elaborated on the concept of "reasonable expectation" within the context of section 14, and found that "the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason". He also found that an institution relying on the section 14 exemption bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harms. I agree with the approach of former Commissioner Wright and adopt it for the purposes of this appeal.

The Ministry submits that the video surveillance was undertaken as part of an investigation into allegations that certain companies were involved in avoiding payment of Ontario stumpage fees on crown timber. The Ministry states that disclosure of the records would reveal the methods and the abilities of the surveillance team.

In order to constitute an "investigative technique or procedure" it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that a particular technique or procedure is known to the public would normally lead to the conclusion that such compromise would not be effected by disclosure and accordingly, that the technique or procedure in question is not within the scope of section 14(1)(c) (Order P-170).

I agree with the above reasoning. In my view, videotape surveillance is a commonly utilized method for investigative purposes and disclosure of this use would not reveal a technique or procedure unknown to the public. Further, I note that the MNR provided an index of the responsive videotapes to the appellant and I fail to see how, in the circumstances, disclosure of the records could reasonably be expected to result in the enumerated harm. In my view, the Ministry has not shown how disclosure of this technique would hinder or compromise its effective utilization. Accordingly, I find that in the circumstances of this appeal, section 14(1)(c) does not apply.

ORDER:

1. I order the Ministry to disclose the records to the appellant by providing him with a copy of the records no later than **June 5, 1998**.

2. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records that are disclosed to the appellant pursuant to Provision 1.

Original signed by: May 15, 1998
Mumtaz Jiwan
Adjudicator
(formerly Inquiry Officer)