



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

ORDER P-1584

Appeal P-9700363

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records concerning the investigation and findings of the Coroner's office with respect to the pregnancy and delivery of a stillborn child by a named individual. The appellant is the father of the named individual, and has her consent to access her personal information.

The Ministry identified a two-page responsive record, and denied access to it under the following sections of the Act:

- law enforcement - sections 14(1)(a), 14(1)(b) and 14(2)(a)
- invasion of privacy - section 49(b)
- discretion to refuse requester's own information/law enforcement - section 49(a)

The appellant appealed the Ministry's decision.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties.

In its representations, the Ministry withdrew the section 14(2)(a) exemption claim. Because the appropriate consents had been obtained from all individuals whose personal information is contained in the record, the Ministry also withdrew its reliance on section 49(b).

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. Having reviewed the record, I find that it contains the personal information of the appellant, the appellant's daughter and other family members of the appellant, all of whom have consented to disclosure of their personal information to the appellant.

DISCRETION TO REFUSE APPELLANT'S OWN INFORMATION/LAW ENFORCEMENT

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

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 the exemptions in sections 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. In order to determine whether the exemption provided by section 49(a) applies to the information in the record, I will first consider whether the exemptions in sections 14(1)(a) and/or (b) apply.

LAW ENFORCEMENT

Sections 14(1)(a) and (b) read as follows:

A head may refuse to disclose a record where 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 record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act which defines "law enforcement" in the following manner:

"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 states that the record documents the initial investigation undertaken by the Coroner, which was followed by a criminal investigation conducted by the Ontario Provincial Police (the OPP). In the Ministry's view, the record was collected and compiled by the OPP and formed an integral part of the police investigation concerning the baby's birth and death.

I accept the Ministry's position that the OPP investigation qualifies as a "law enforcement" matter.

The purpose of sections 14(1)(a) and (b) is to allow the Ministry discretion to deny access to a record in circumstances where disclosure could reasonably be expected to interfere with an ongoing law enforcement matter or investigation.

Turning first to section 14(1)(b), the Ministry has advised this office that the OPP investigation has been completed and the appellant's daughter has been charged under the Criminal Code of Canada. Because the law enforcement matter has now reached the prosecution stage, I am not persuaded that disclosure of the record could reasonably be expected to interfere with an **ongoing** investigation. Therefore, I find that section 14(1)(b) is no longer applicable.

As far as section 14(1)(a) is concerned, the Ministry states that disclosure would interfere with an active law enforcement matter undertaken by the OPP, but its representations focus almost exclusively on how disclosure would interfere with the OPP investigation. The Ministry submits:

The Ministry is of the view that release of the coroners records **at this point in time** [i.e. before completion of the OPP investigation] could lead to the suppression of potential evidence and would alert the involved parties about the extent and nature of the evidence compiled by the Ontario Provincial Police, a circumstance which would hamper the conduct of the ongoing police investigation into the baby's birth and death. [emphasis in original]

As previously indicated, the investigation is completed, and charges have been laid. For this reason, and based on the evidence provided by the Ministry and my review of the record, I am not persuaded that disclosure of the record could reasonably be expected to interfere with a law enforcement matter, and I find that section 14(1)(a) is not applicable.

Accordingly, I find that the requirements of sections 14(1)(a) and (b) have not been established by the Ministry, and therefore, the record does not qualify for exemption under section 49(a) of the Act.

ORDER:

1. I order the Ministry to disclose the record in its entirety to the appellant by sending the appellant a copy by **July 7, 1998**.
2. In order to verify compliance with 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: _____
Tom Mitchinson
Assistant Commissioner

_____ June 16, 1998