



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1579

Appeal P-9800039

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). The request was for access to records relating to an investigation undertaken by the Ontario Provincial Police (the OPP) Anti-Rackets Branch in 1981 which was reflected in a Statement-Police Report that accompanied the request. The requester is one of the individuals who was the subject of the investigation.

The Ministry identified two records as responsive to the request and granted access to a portion of one of them. Access to the remaining information was denied pursuant to the following exemptions contained in the Act:

- law enforcement - section 14(2)(a)
- information published or available - section 22(a)
- discretion to refuse requester's own information - section 49(a)
- invasion of privacy - section 49(b)

The requester, now the appellant, appealed the Ministry's decision to deny access to the requested records. A Notice of Inquiry was provided by this office to the appellant and the Ministry. Representations were received from both parties. With its submissions, the Ministry included a copy of a letter to the appellant disclosing to him one of the records at issue, a Statement of Claim dated July 1985 which was filed with the District Court of Ontario (as it was then) in Sudbury. Section 22(a) was claimed to apply only to this record. Accordingly, I need not consider the possible application of the section 22(a) exemption to the remaining record, a four-page summary of evidence prepared by a Detective Sergeant with the OPP's Anti-Rackets Branch dated May 15, 1981.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined to mean, in part, recorded information about an identifiable individual. I have reviewed the record remaining at issue and find that it contains the personal information of the appellant, as well as other identifiable individuals.

DISCRETION TO REFUSE APPELLANT'S OWN INFORMATION

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,

where 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 which contain the appellant's personal information under section 14(2)(a). 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 exemption in section 14(2)(a) applies.

LAW ENFORCEMENT

In order for a record to qualify 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 record must have been prepared in the course of law enforcement, inspections or investigation; **and**
3. The record 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 relates to an investigation undertaken by the OPP's Anti-Rackets Branch into the activities of a number of individuals with a view to determining whether a violation of the Criminal Code may have occurred. I find that the OPP is clearly a law enforcement agency and the record was prepared in the course of a law enforcement investigation. Parts 2 and 3 of the test have, therefore, been satisfied.

The word "report" is not defined in the Act. However, previous orders have found that in order to qualify as a report, a record must consist of a formal statement or account of the results of the collection and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Orders 390 and P-1422).

The Ministry submits that the record was the official formal accounting of facts regarding the investigation which was conducted. It goes on to indicate that this report provided information and/or opinions gathered as a result of interviews with the subject of the investigation. The Ministry then suggests that "the information was assessed, evaluated and were then submitted as a report with a final disposition".

The appellant concedes that the record likely qualifies for exemption under section 14(2)(a). He argues, however, that he should be provided with access to it as he may already have a copy and because of the passage of time. I am unable to determine, based on the submissions made by the appellant, whether he has already received a copy of this document through some other access avenue. In addition, the passage of time does not lessen the application of the exemption in section 14(2)(a).

I have reviewed the record at issue and find that it contains both recordings of fact and certain conclusions reached by the officer who prepared the record based on his understanding of those facts. In my view, the record qualifies as a "report" for the purposes of section 14(2)(a) as it

represents a collation of the gathered information, as well as stating certain conclusions which were arrived at following the consideration of that information.

As all three parts of the test for section 14(2)(a) have been met, I find that the record qualifies for exemption under that section and is, accordingly, exempt under section 49(a). Because of the manner in which I have addressed the application of sections 14(2)(a) and 49(a) to the record, it is not necessary for me to consider section 49(b).

ORDER:

I uphold the Ministry's decision to deny access to the record.

Original signed by: _____ June 9, 1998
Donald Hale
Adjudicator
(formerly Inquiry Officer)