



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

# **ORDER PO-1650**

Appeal PA-980231-1

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 information relating to the fire bombing of a named abortion clinic including the following:

- any written instructions for tests to be carried out at the premises;
- tests on materials from those premises;
- any record describing the make and model of the steel door;
- any records containing tests carried out on the door; and
- any reports of the results of tests or analyses identifying the name of the flammable material used, method of ignition, estimating quantities etc.

The appellant submitted a similar request simultaneously to the Toronto Police Services Board (the Police). I disposed of the issues in that appeal in Order MO-1171, dated December 4, 1998.

The Ministry denied access to all responsive records pursuant to the following sections of the Act:

- law enforcement - sections 14(1)(a), 14(1)(b) and 14(2)(a);
- security - section 14(1)(i);
- facilitate commission of unlawful act - section 14(1)(l); and
- invasion of privacy - section 21(1) with reference to section 21(3)(b).

The appellant appealed the Ministry's decision to deny access.

During mediation, the Mediator informed the appellant that the records did not contain any written instructions for tests to be carried out nor the make and model of the steel door. The appellant accepted that this information does not exist.

Also during mediation, the appellant confirmed that he was not seeking access to any personal information. Therefore, none of the personal information contained in the records is at issue in this appeal.

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

## **PRELIMINARY MATTER:**

In his representations, the appellant takes issue with the fact that the Ministry claimed exemptions for records which do not exist. He believes that the Ministry's decision should have indicated that the records do not exist and is, therefore, an improper decision on access. The appellant did not raise this issue during the mediation stage, nor in response to the Mediator's Report, which is a document that is sent to the parties to advise them of the issues to be adjudicated. In fact, the appellant indicated that he accepted that certain identified records do not exist. Therefore, it must be assumed that he has turned his mind to the non-

existence of the records and the content of the Ministry's decision. To address this issue at this time would unnecessarily delay the conclusion of this matter. Therefore, I will not address this issue.

## **RECORDS:**

The records consist of a two-page document entitled "Follow Up Information"; a Fire Investigation Report with a four-page Full Incident Report (Confidential); a duplicate Fire Investigation Report with a two-page Partial Incident Report (Public); 10 pages of "Details"; a five-page "General Incident Details (Red Book Entry)"; a five-page Engineering Report on the investigation; and two reports by the Centre of Forensic Sciences.

## **DISCUSSION:**

### **LAW ENFORCEMENT**

The Ministry indicates that all of the responsive records are located in the Office of the Fire Marshal and relate to an investigation of the fire-bombing of an abortion clinic in 1992.

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

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.

The purpose of these exemptions is to provide the Ministry with the discretion to deny access to records in circumstances where disclosure could reasonably be expected to interfere with an ongoing law enforcement matter or investigation. The Ministry bears the onus of providing evidence to substantiate that a law enforcement matter or investigation is ongoing, and that disclosure of the records could reasonably be expected to interfere with the matter or investigation.

For a record to qualify for exemption under either of these two sections, the matter or investigation with which the disclosure could interfere must first satisfy the definition of "law enforcement", which is a term found in section 2(1) of the Act.

This section defines "law enforcement" to mean (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 records at issue in this appeal document the investigation that was undertaken by staff of the Fire Marshal pursuant to section 3(h) of the former Fire Marshals Act. Moreover, the Ministry indicates that the investigation into the fire-bombing was undertaken by the Police and the Fire Marshal's office and that the records at issue are connected to the Police investigation.

Previous orders of this office have found that investigations conducted by the Fire Marshall fall under the definition of "law enforcement" as defined in section 2(1) of the Act (Orders P-1150 and P-1449). I am satisfied that, in investigating the bombing of an abortion clinic, the Fire Marshal's office was engaged in "law enforcement" activities, as defined in section 2(1) of the Act. I am also satisfied that the records at issue relate to a "law enforcement" investigation conducted by the Police.

The Ministry submits that the records relate to an active, ongoing investigation into the fire-bombing of the clinic. The Ministry acknowledges that the investigation of the fire by the Fire Marshal's office is presently considered closed, however, the police have not completed their investigation into the matter. In this regard, the Ministry's submissions are similar to those provided by the Police in Order MO-1171.

Essentially, the Ministry states that this matter forms part of a larger joint police effort in investigating crimes against other abortion clinics and physicians. The Ministry refers to anti-abortion activities that have been directed towards abortion clinics and physicians which have resulted in life-threatening personal attacks.

The Ministry expresses the concern that premature disclosure of the information concerning the current investigation could reasonably be expected to provide an opportunity for individuals involved to tamper with, suppress or destroy evidence which the police may uncover at a later time. The Ministry submits further that premature disclosure of the records could reasonably be expected to alert the perpetrator of the fire about the extent and nature of the evidence compiled by the Fire Marshal's office and the police as well as the direction of the investigation, which could help the individual to escape detection.

The records relate to an event which occurred approximately eight years ago. However, based on the representations and my review of the records, I am satisfied that they contain information which relates to an ongoing law enforcement investigation and/or matter, and that disclosure of this information could reasonably be expected to interfere with the investigation and/or matter. Therefore, I find that the records are properly exempt under sections 14(1)(a) and (b) of the Act.

Because of the findings I have made, it is not necessary for me to consider the possible application of sections 14(1)(i), (l), 14(2)(a) or 21(1) of the Act.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_

Laurel Cropley  
Adjudicator

\_\_\_\_\_ January 7, 1999