



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

# ORDER PO-1719

Appeal PA-990078-1

Ministry of the Solicitor General and Correctional Services



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## **NATURE OF THE APPEAL:**

The appellant represents a church which was destroyed by fire in April 1998. He submitted a request to the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for all information pertaining to the fire. Specifically, the appellant sought access to the investigator's report, statements, videos, notebooks, photographs, samples and exhibits sent to the Centre of Forensic Science (the Centre) as well as reports by the Centre and the Ministry.

The Ministry denied access to the responsive records pursuant to sections 14(1)(a), 14(1)(b), 14(1)(f), 14(2)(a), 15(b), 19, 21(1), 21(2)(f) and 21(3)(b) of the Act.

The appellant appealed the Ministry's denial of access. The appellant also attached an authorization from the Pastor of the church authorizing the appellant to access any information pertaining to him in the records.

During mediation, the Ministry indicated that prior to making its decision on access, it contacted both the Ontario Fire Marshal's office (the Fire Marshal) and the Toronto Police Service (the Police). The Ministry stated that it was advised that the investigation into the fire was still active and on-going, and that the Fire Marshal's investigation is linked to a homicide investigation being conducted by the Police. The Ministry indicated that its decision to withhold the records from access was made because of the objections to disclosure of both the Fire Marshal's office and the Police.

The appellant takes issue with the Ministry's position that the Police can "override", or in any way influence, a decision regarding access to Ministry records.

I sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from the Ministry only. In its representations, the Ministry has withdrawn its reliance on sections 15(b), 19, 21(1), 21(2)(f) and 21(3)(b) of the Act. Therefore, the only exemptions remaining at issue are:

- law enforcement - sections 14(1)(a), (b) and 14(2)(a); and
- right to fair trial - section 14(1)(f).

## **RECORDS:**

The records consist of handwritten notes, fire investigation reports, engineering reports, report of and documentation from the Centre of Forensic Sciences, drawings, photographs and a register of the photographs, correspondence, documentation from the Office of the Fire Marshal, and statements. The records consist of a number of duplicates and drafts.

## **DISCUSSION:**

### **LAW ENFORCEMENT**

The Ministry indicates that the responsive records document an investigation undertaken by the Fire Marshal and the Police in connection with the April 1998 fire at the church.

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 on-going 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).

#### **“law enforcement”**

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 9(2)(a) of the Fire Protection and Prevention Act, 1997 (the FPPA). Section 9(2)(a) of the FPPA states:

It is the duty of the Fire Marshal,

... to investigate the cause, origin and circumstances of any fire or any explosion or condition that in the opinion of the OFM might have caused a fire, explosion, loss of life or damage to property.

The Ministry outlines the powers and authority of Fire Marshal inspectors in conducting investigations under the FPPA.

Previous orders of this office have found that investigations conducted by the Fire Marshal fall under the definition of "law enforcement" as defined in section 2(1) of the Act (Orders P-1150, P-1449 and PO-1650). I am satisfied that, in investigating the circumstances of the fire at the church, the Fire Marshal's office was engaged in "law enforcement" activities, as defined in section 2(1) of the Act.

The Ministry indicates further that once a determination is made by the Fire Marshal that a fire is arson or otherwise suspicious, the relevant police service would commence a criminal investigation into an offence under the Criminal Code. The Ministry states that, in this case, the investigation into the fire was undertaken by the Police Homicide Squad and that the records at issue are connected to the Police investigation. I am satisfied that the records at issue also relate to a "law enforcement" investigation conducted by the Police.

I indicated above that the appellant appears to object to the Ministry's withholding of the records on the basis of an investigation being conducted by the Police.

The extent to which "law enforcement" information should be protected under freedom of information legislation was discussed in Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980, vol. 2 (Toronto: Queen's Printer, 1980) pp. 294 - 295 (the Williams Commission Report):

The need to exempt certain kinds of law enforcement information from public access is reflected in all of the existing and proposed freedom of information laws we have examined. This is not surprising; if they are to be effective, certain kinds of law enforcement activity must be conducted under conditions of secrecy and confidentiality.

Interviews with law enforcement personnel conducted by our research staff indicate concerns similar to those manifested in typical exemptions for law enforcement information. Interviewees stressed the need to protect confidential informants and to ensure the continued flow of information from other law enforcement agencies. Concerns were expressed to the effect that disclosure of law enforcement techniques would reduce their effectiveness.

Additionally, ... public access to investigative files would do much to frustrate the conduct of investigations, and premature disclosures prior to trial would impair the ability of the prosecution to effectively present its case.

I note that the exemptions provided in section 14 of the provincial Act are virtually identical to those in section 8 of the municipal Act and reflect, to a large degree, the discussions undertaken in the Williams Commission Report. In my view, once the Ministry determines that the records fall within the definition of “law enforcement”, it has the discretion to consider the application of the law enforcement exemptions regardless of whether the law enforcement agency is the Ontario Provincial Police or another police force. To take any other approach would, in my view, undermine the legislature’s intent in exempting law enforcement records from disclosure, that is, the prevention of harm to law enforcement processes.

**“on-going law enforcement matter or investigation”**

The Ministry indicates that the Fire Marshal’s investigation into the fire is no longer active and that its file is presently closed. However, the Ministry states that it has confirmed with the Police that their investigation has not been completed. The Ministry has provided details of the investigation in confidence. I am satisfied, based on these submissions, that the Police matter remains on-going.

**“interference”**

The Ministry also describes in detail the expected interference with the on-going Police matter and investigation. In general, the Ministry concludes that public dissemination of the information in the records, at this time, could reasonably be expected to lead to the suppression or destruction of evidence and could alert a suspect or others about the extent and nature of the evidence compiled by the Fire Marshal and the Police which could hinder the investigation and any consequences flowing from it. I accept the evidence presented by the Ministry in this regard.

**Conclusion**

The records relate to an event which occurred approximately one and a half years ago. However, based on the representations and my review of the records, I am satisfied that they contain information which relates to an on-going 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 these findings it is not necessary for me to consider the possible application of sections 14(1)(f) and 14(2)(a).

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_ September 30, 1999

Laurel Cropley

Adjudicator