



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1788

Appeal PA-990299-1

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (now the Ministry of the Solicitor General) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to “[a]ll records including, but not limited to all reports, documents, and search warrants related to ... shots being fired at a helicopter in the vicinity of, or in the air above, Camp Ipperwash in August of 1993.”

The Ministry located 283 pages of responsive records, consisting of occurrence reports, police officers’ notes, “will say” statements, interview reports, and other related documents compiled during an investigation into the incident. The Ministry denied access to the records pursuant to sections 14(1)(a), (b) and (f), 14(2)(a) and 21(1) of the Act. The Ministry identified the “presumed unjustified invasion of personal privacy” under 21(3)(b) and the factor listed under section 21(2)(f) in support of the section 21(1) exemption claim.

The requester (now the appellant) appealed the Ministry’s decision and, during the course of mediation, claimed that there is a compelling public interest in the disclosure of the records pursuant to section 23 of the Act.

I sent a Notice of Inquiry to the Ministry and received representations in response. Attached to the Ministry’s representations was a supplementary decision letter to the appellant, advising that pages 114-164 of the records do not relate to the described incident and are not responsive to the request. The appellant did not take issue with this decision, and I have removed these pages from the scope of the appeal.

I then sent a Notice of Inquiry to the appellant, together with a copy of the Ministry’s representations. The appellant did not submit representations.

DISCUSSION:

On-going Law Enforcement Matter or Investigation

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 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 cause interference.

For a record to qualify for exemption under either of these two sections, the matter or investigation must first satisfy the definition of "law enforcement", as defined in section 2(1) of the Act.

The Ministry submits that the records document the investigation and findings of an active and ongoing investigation undertaken by the Ontario Provincial Police (the OPP) into possible criminal activity associated with gunfire at a helicopter which took place at Camp Ipperwash in 1993.

The OPP investigation into a possible Criminal Code offence clearly qualifies as a "law enforcement" activity.

Although the appellant did not submit representations, in his letter of appeal he states the following:

The information requested is from a date 6 years ago. We are not aware that any charges have been laid nor that any are pending.

We understand that any investigation that began in 1993 is no longer active.

As there is no active criminal investigation, we have taken the position that a denial cannot be made under any of sections 14(1)(a), 14(1)(b), 14(1)(f) or 14(2)(a).

The Ministry states that the OPP investigation into the shooting incident remains ongoing. The Ministry explains that the OPP received new information relating to the incident as recently as 1999, and that its investigation remains active and ongoing. The Ministry relies on the findings of Orders P-1150 and M-1171 that considered similar circumstances. Having reviewed the records and considered the particular circumstance of this appeal, I accept the Ministry's position.

The Ministry describes in detail, the manner in which disclosure could be expected to interfere with the ongoing OPP investigation. The Ministry submits that public dissemination of information contained in the records, at this time, could reasonably be expected to lead to the suppression or destruction of evidence and could alert others about the extent and nature of the evidence compiled by the OPP, which could in turn hinder the investigation and any consequences flowing from it. I accept the evidence and argument presented by the Ministry in this regard.

Although the records relate to an incident that occurred in 1993, based on the Ministry's representations and my review of the records, I am satisfied that they contain information which relates to an ongoing law enforcement investigation, and that disclosure of this information could reasonably be expected to interfere with the investigation. Therefore, I find that the records qualify for exemption under section 14(1)(b) of the Act.

Because of this finding, it is not necessary for me to consider the possible application of the other exemptions claimed by the Ministry. In addition, because the public interest override does not apply to records which qualify for exemption under section 14 of the Act, it is not necessary for me to consider the possible application of section 23 in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ May 24, 2000