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

ORDER PO-1838

Appeal PA-000069-1

Ministry of Natural Resources

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NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of Natural Resources (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*), denying access to handwritten notes of a conservation officer.

As background to this appeal, the requesters (now the appellants) made a request for a report relating to their complaint about damage to their trapline. The appellants had reported incidents of damage to their trapline to the Ministry in December 1999 and January 2000. The Ministry located two pages of notes and six photographs and denied access to the records relying on the discretionary exemption in section 14(1)(a) of the *Act*. The appellants have appealed this decision. During the course of mediation of this appeal through this office, the Ministry agreed to and has provided the appellants with copies of the six photographs.

In response to a Notice of Inquiry sent from this office, the Ministry has provided representations in this matter, portions of which have been shared with the appellants and portions of which were withheld for confidentiality reasons. The appellants have also provided representations in response.

RECORD:

The record at issue consists of two pages of handwritten notes, dated December 30, 1999, taken by the conservation officer investigating the appellants' complaint of damage to their trapline. It should be noted that although the appellants made two reports of damage to their traplines, no further records were generated as a result of the second report.

CONCLUSION:

I uphold the decision of the Ministry to deny access to the record.

DISCUSSION:

PERSONAL INFORMATION/LAW ENFORCEMENT

Although the Ministry relied on section 14(1)(a) only, the first issue which must be considered is whether the record contains the personal information of any individuals, since if it contains the personal information of the appellants, section 49(a) may also apply. Further if the record contains the personal information of the appellant and of other individual(s), section 49(b) may apply.

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual. On my review of the record, I am satisfied that it contains personal information of one of the appellants, and of an individual who accompanied the appellant in a meeting with the conservation officer.

Under section 47(1) of the *Act*, individuals have a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions to this general right of access. Section 49(a) provides an institution with the discretion to deny access to this information in certain instances, including (as is alleged in this case) where disclosure could reasonably be expected to interfere with a law enforcement matter [s.14(1)(a)].

The purpose of the exemption contained in section 14(1)(a) of the *Act* is to provide an institution with the discretion to deny access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter or investigation: see, for instance, Order M-1067. The institution bears the onus of providing evidence to substantiate that first, a law enforcement matter or investigation is ongoing and second, that disclosure of the records could reasonably be expected to interfere with the matter or investigation.

Section 2(1) of the *Act* 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);

In its representations, the Ministry has referred to its responsibilities under the *Crown Forest Sustainability Act* (the *CFSA*), which includes the investigation of alleged infractions of that *Act*. These investigations may result in the laying of charges. Offences under the *CFSA* are provincial offences, and are quasi-criminal in nature. The Ministry submits that as the record consists of the notes of an officer during the conduct of an investigation under the *CFSA*, it is clearly related to the Ministry's law enforcement mandate.

Further, the Ministry states that its investigation is ongoing and the alleged illegal activities are being monitored. If the record is disclosed, it would provide details of the investigation which could thwart the effectiveness of the investigation. Accordingly, it submits, disclosure could reasonably be expected to interfere with a law enforcement matter, within the terms of section 14(1)(a).

In their representations, the appellants query whether the investigation is ongoing. Further, the appellants state that since they provided the Ministry with the information in the record, withholding the information leads to an "absurd result."

I am satisfied that the Ministry has established that the record involves a matter of "law enforcement" within the meaning of section 2(1) of the *Act*, in that the investigations in which it is engaged could lead to proceedings before a court or tribunals in which sanctions may be imposed. Further, although the appellants do not have some of the detail of the Ministry's representations on the issues, since some of them have been withheld for confidentiality reasons, the Ministry's submissions establish that the investigation is ongoing.

The Ministry must also demonstrate that disclosure of the record could *reasonably be expected* to interfere with the matter or investigation. Again, the Ministry has provided representations on this issue some, but not all, of which has been shared with the appellants. Based on the Ministry's representations, I am satisfied

that it has been established that there is a reasonable likelihood that disclosure will interfere with its ongoing investigation.

Absurd Result

Prior orders have found that non-disclosure of personal information which was originally provided to the institution by a requester, or personal information of other individuals which would clearly have been known to a requester, would contradict one of the primary purposes of the *Act*, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. In these orders, it has been found that a denial of access in these circumstances would constitute, according to the rules of statutory interpretation, an "absurd" result. Accordingly, disclosure has been ordered where an absurd result is found.

This principle has been applied so as to support access to information which might otherwise be exempt from disclosure under section 14(1)(a) of the *Act*: see Order MO-1314, dealing with the municipal equivalent of section 14(1)(a). However, on the facts of this case, I find that the principle of "absurd result" is not applicable. As I have indicated, the appellants have submitted that the information in the record was provided by them. On my review, although some of the information in the record was provided by one of the appellants or was known to the appellants, some of it was not. Further, in my view, the record cannot reasonably be severed under section 10(2) of the *Act*.

I find, therefore, that the "absurd result" principle does not support the appellants' request for the record.

In sum, it has been established that disclosure of the record could reasonably be expected to interfere with a law enforcement matter, under section 14(1)(a) of the *Act*. To the extent that section 49(a) provides the Ministry with a discretion to nonetheless disclose the information, it has also been established to my satisfaction that this discretion was properly exercised in the circumstances of this case.

In view of my findings, it is unnecessary to consider the applicability of section 49(b) of the *Act*.

ORDER:

I uphold the decision of the Ministry to deny access to the record.

Original Signed By: November 30, 2000
Sherry Liang
Adjudicator