



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2118

Appeal PA-010280-3

Ministry of the Environment



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NATURE OF THE APPEAL:

The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Environment (the Ministry) for records pertaining to the environmental status of a named business at a particular location adjoining the appellant's property. Initially, the Ministry issued a decision granting partial access to the records. The Ministry also advised that an affected third party might need to be notified. The appellant appealed this decision. At the mediation stage, all issues were resolved save for the Ministry's decision concerning the records subject to third party notification.

The Ministry then issued a decision granting full access to these records providing that the affected third party did not appeal the decision. The affected third party did, in fact, file an appeal of the Ministry's decision with this office. Shortly thereafter, the Ministry learned that its staff was conducting a law enforcement investigation of the affected third party. Consequently, the Ministry issued another decision letter to the appellant exempting all records at issue from disclosure on the basis of sections 14(1)(a) and (b) of the *Act* asserting that disclosure of the records could reasonably be expected to interfere with a law enforcement investigation. On this basis, the affected third party closed its appeal with this office.

The appellant appealed the decision to withhold these records.

I received representations from the Ministry, the non-confidential portions of which were shared with the appellant. The appellant also provided representations.

Following the exchange of representations and before I took a final decision in the appeal, the appellant wrote to me stating that the law enforcement investigation in question is now concluded. The Ministry's Freedom of Information Coordinator later confirmed that this was the case.

RECORDS:

There are 23 records at issue in this appeal. They consist of ground water and sewer monitoring data reports and laboratory certificates of analysis pertaining both to the appellant's property and that of the named business.

CONCLUSION:

The records are not exempt under sections 14(1)(a) or (b) of the *Act*.

DISCUSSION:

LAW ENFORCEMENT

Introduction

Sections 14(1)(a) and (b) provide that:

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 institution with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an *ongoing* law enforcement matter or investigation.

The first question to be determined is whether the law enforcement matter in question is indeed ongoing.

Regarding the status of the investigation, the Ministry initially made the following representations:

The ministry's [Investigations and Enforcement Branch (IEB)] currently has an ongoing investigation of [a named company] which may or may not lead to a recommendation for prosecution . . .

. . . [T]he records at issue in this appeal are directly relevant to the IEB investigation currently underway and have the potential to become evidence in the event that prosecution is undertaken.

The Ministry also made further, more detailed, submissions that I am not at liberty to disclose due to confidentiality concerns.

However, as indicated above, the Ministry later indicated that the IEB's investigation is concluded.

It is clear that the investigation pertaining to the environmental status of the relevant site is no longer ongoing. Therefore, section 14(1)(b) cannot apply. However, in certain circumstances, the conclusion of the investigation would not necessarily preclude the application of section 14(1)(a). In Order PO-1898, also involving the Ministry of the Environment, former Adjudicator Irena Pascoe found that, although the investigation phase had been concluded, section 14(1)(a) applied because the matter was proceeding to the prosecution stage and was "still before the courts".

By contrast, in this case, I have no evidence before me to indicate that, despite the conclusion of the investigation, the law enforcement matter is proceeding to the prosecution phase or is

otherwise ongoing. Therefore, I conclude that neither section 14(1)(a) nor (b) applies to the records at issue.

ORDER:

1. I do not uphold the Ministry's decision to deny access to the records at issue.
2. I order the Ministry to disclose the 23 records at issue to the appellant by **April 4, 2003** but not before **March 30, 2003**.

Original Signed By: _____

Rosemary Muzzi
Adjudicator

February 28, 2003 _____