



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2412

Appeal PA-040066-1

Ministry of Community Safety and Correctional Services



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NATURE OF THE APPEAL:

During the month of June 2003, the appellants visited the Niagara Fallsview Casino (the Casino). During their visit to the Casino, the appellants were taken into custody by the Casino Enforcement Unit of the Ontario Provincial Police (the OPP). The appellants later made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry for access to records held by the Ministry relating to the incident, including a videotape.

The Ministry located 12 pages of responsive records and a videotape, and advised that it was granting partial access to the records. The Ministry stated that it was withholding information under section 14(1)(d), (g), (i) and (l) (law enforcement), in conjunction with section 49(a) of the *Act*, and under section 49(b) (personal privacy). The Ministry explained that its section 49(b) claim is based on the provisions of sections 21(2)(f) and 21(3)(b), which deal with particular aspects of personal privacy. The Ministry also stated that some of the information in the records was not responsive to the request.

The appellants appealed the Ministry's decision to this office.

During mediation, the appellants agreed not to pursue access to:

- The withheld portions of pages 1 and 2
- The police codes withheld on the basis of section 14(1)(l), and
- The information withheld on the basis that it is non-responsive.

Because section 14(1)(l) was claimed only for the police codes, the removal of that information from the scope of the appeal during mediation means that it is not at issue in this appeal. Mediation did not resolve the other issues in the appeal and the matter proceeded to the adjudication stage of the process.

This office began the adjudication process by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the Ministry and the Casino, which is an affected party. Both the ministry and the Casino responded with representations. The Ministry's representations indicate that it no longer relies on section 14(1)(g), which is therefore no longer at issue. After receipt of the Ministry's representations, this office sent the Notice of Inquiry to the appellants, along with the complete representations of the Ministry and the Casino. The appellants responded with representations.

RECORDS:

There are ten pages of record at issue, and one videotape, described as follows:

RECORD	DESCRIPTION	EXEMPTIONS APPLIED
Pages 3 and 4	Casino Enforcement Unit Incident Report excerpt	s. 49(a) with s. 14(1)(d) and (i) s. 49(b)
Page 5	Casino Enforcement Unit Incident Report excerpt	s. 49(a) with s. 14(1)(d) and (i) s. 49(b)

Pages 6 and 7	Casino Enforcement Unit Person Profile and Incident Report excerpt	s. 49(a) with s. 14(1)(d) and (i) s. 49(b)
Page 8	Casino Enforcement Unit Incident Report excerpt	s. 49(a) with s. 14(1)(d) and (i) s. 49(b)
Pages 9 and 10	Casino Enforcement Unit Incident Report excerpt and Person Profile	s. 49(a) with s. 14(1)(d) and (i) s. 49(b)
Pages 11 and 12	Casino Occurrence Report	s. 49(a) with s. 14(1)(d) and (i) s. 49(b)
Videotape	Surveillance videotape taken at the Casino	s. 49(a) with s. 14(1)(d) and (i) s. 49(b)

DISCUSSION:

PRELIMINARY MATTERS

The videotape at issue in this appeal is a surveillance videotape taken at the Casino, on the Casino floor. The videotape contains images of the appellants, the officers and Casino employees who responded to the incident, as well as other Casino patrons who incidentally happened to be in the vicinity. It ends as the appellants are escorted off the Casino floor.

In their representations, the appellants clarify that they are not interested in obtaining access to the videotape that is taken on the Casino floor. They state:

In regards to the video surveillance we are not seeking the part of the tape that has other patrons of the casino on it. We are seeking the video tape of the Security Office in which they held [named appellant] and I, and the tape of the holding cell. There [were] no Casino Patrons present other than us.

Further in their representations, the appellants state:

We are only seeking the portion of [named appellant] and I in the holding cell, of which there was one camera in the far right hand corner near the ceiling. We are not seeking the video of upstairs with other patrons or [information as to] where [the camera] was in the cell, compromising the position of cameras or security of their protocol.

Having reviewed the appellants' original request to the Ministry, the portion of the request relating to the videotape is worded as follows:

We are aware that there was a security camera in your office and a camera in your holding cell. Therefore, we are requesting a copy of the security tapes with audio

for the night of June 8, 2003, while [named appellant] and I were in your care and custody. (In the security office and holding cell)

As the videotape provided by the Ministry does not include any footage in the security office or holding cell, it clearly does not cover the period of time referred to in the appellants' request. It only includes footage they say they do *not* require. Therefore, the videotape is not responsive to the appellants' request. I am removing it from the scope of the appeal. Accordingly, the records at issue consist of pages 3 through 12, inclusive.

Since the Ministry has not responded to the portion of the appellants' request that deals with a videotape of them being incarcerated in the holding cell, I will order the Ministry to issue a decision on that part of the appellant's access request in accordance with the *Act*, treating the date of this order as the date of the request.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

"Personal information" means *recorded information about an identifiable individual*, including:

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex sexual orientation or marital or family status of the individual,
- (b) information relating to the ... criminal or employment history of the individual...,
...
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
...
- (g) the views of opinions of another individual about the individual, and
- (h) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information. [Order 11]

The meaning of “about” the individual

For information to be “about an identifiable individual”, it must be reasonable to expect that an individual may be identified if the information is disclosed. [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)]

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Whether the information is “personal information” does not depend on the means by which it is recorded or the medium in which it appears. [See Orders M-528, MO-1378, P-1561-R and MO-1410]

Do the records contain personal information and if so, to whom do they relate?

The Ministry submits that the Casino records at issue contain the types of personal information listed in paragraphs (a),(d),(e),(g) and (h) of the definition of that term in section 2(1), with respect to the appellants as well as other individuals.

The Casino submits:

The material in question identified by name various Casino employees involved in the incident. These individuals have a reasonable expectation of personal privacy while carrying out their employment duties.

The appellants do not make any specific submissions on whether the information at issue consists of personal information as defined in section 2(1) of the *Act*. However, the appellants do submit that “the Ministry has already released partial access with names and information”.

Pages 3, 4, 5 and pages 7, 8, 9 consist of 3-page excerpts of two Incident Reports. Each Incident Report excerpt relates to one of the two appellants. These pages appear to be printouts of a standard form computer generated document. Each Report has been completed to reflect the information related to the incident and documents the specific information of the appellant to whom the Report relates. Such information includes the date, time, location and a summary or description of the incident being reported, as well as a detailed narrative describing the incident.

The information also includes the name, age, sex, address and telephone number of the appellant to whom the Incident Report relates, as well as a photograph of that appellant. The name of the other appellant involved in the incident is noted on each Report. Also included are the names and badge numbers of the police officers who responded, as well as the names and identification numbers of several Casino employees associated with the incident.

In my view, pages 3, 4, 5, 7, 8, and 9 contain the personal information of both appellants within the meaning of paragraphs (a), (d), and (h) of the section 2(1) definition of "personal information". These pages also contain information of a non-personal nature, such as the time, date and location of the alleged incident as well as the occurrence number assigned to the incident. Other information that does not qualify as personal information are the names of the police officers or Casino employees associated with the incident, their badge or identification numbers and the names of managers or investigators. The information about these individuals appears in their professional or employment capacity as their involvement or presence in relation to the incident results from the discharge of their professional or employment duties and does not reveal anything of a personal nature about them. Furthermore, except where identifying information about police officers appears in a context of complaints of professional misconduct against them, such information is normally considered to be information about the officers in their professional capacity, and not personal information [Order MO-1288]. Accordingly, I find that pages 3, 4, 5, 7, 8, and 9 contain the personal information of the appellants alone.

Pages 6 and 10 are both Person Profiles, one for each of the appellants. The profiles contain the appellants' sex, date of birth, age, address and phone number, as well as a photograph of each appellant. The information also includes information about whether the appellants are employed at the Casino and whether they have been involved in any other incidents. I find that these two pages clearly contain the personal information of the appellants within the meaning of paragraph (a), (b), and (d) of the definition of "personal information" in section 2(1). They do not contain the personal information of any other individual.

Pages 11 and 12 consist of a Casino Occurrence Report. These pages are a standard form document, completed to record the details of the incident. They record the date, time, location, type of occurrence, the name and identification number of the Casino employee who reported the incident, a description of the occurrence, the name and identification numbers of the Casino employees who responded to or were involved in the incident, the name and address of one of the appellants, a narrative describing the results of the investigation and the names of the officers who responded to the occurrence and the subsequent action taken by those officers.

I find that pages 11 and 12 contain the personal information of the appellants within the meaning of paragraphs (b), (d) and (h) of the definition of "personal information". With respect to information relating to the Casino employees and the police officers, I again find, for the reasons outlined above, that it does not qualify as their personal information for the purposes of the *Act*. Accordingly, pages 11 and 12 contain the personal information of the appellants alone.

In summary, I find that the records at issue contain the personal information of the appellants, and do not contain the personal information of any other individual.

PERSONAL PRIVACY

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Section 49(b) of the *Act* provides that:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

In order for disclosure to "constitute an unjustified invasion of another individual's personal privacy", the information in question must be the personal information of an individual or individuals other than the person requesting it. I have found, above, that the records at issue do *not* contain the personal information of other individuals. I therefore find that they are not exempt under section 49(b).

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/ LAW ENFORCEMENT

Section 49(a) provides:

49. A head may refuse to disclose to the individual to whom the information relates personal information;

(a) where section 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;

The Ministry states that the records at issue qualify for exemption under section 49(a) in conjunction with sections 14(1)(d) and (i). I will consider whether the records qualify for exemption under sections 14(1)(d) and (i) as a preliminary step in determining whether they are exempt under section 49(a).

These sections state:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

Where sections 14(1)(d) and (i) use the words “could reasonably be expected to” the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient. [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Worker’s Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)]

It is not sufficient for an institution to take the position that the harms under section 14 are self-evidence from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption. [Order PO-2040; *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)]

Section 14(1)(d)

In order for the Ministry to rely on section 14(1)(d) of the *Act*, the definition of “law enforcement”, in section 2(1) must be considered in assessing whether the exempt information could reasonably be expected to disclose the identity of a confidential source of information *in respect of a law enforcement matter*, or disclose information furnished only by the confidential source. The definition states:

“law enforcement” means,

- (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 submits that the records fall within parts (a) and (b) of the definition of “law enforcement”:

Part (a) Policing: Encompasses the activities of police services. These activities include the investigation of offences, the collection and analysis of law

enforcement information, the prevention of crime, the maintenance of law and order and the provision of protective services.

Part (b) Investigations or inspections: encompasses the activities of police services to enforce compliance with standards, duties and responsibilities set out in statute or regulation.

The term policing is neither defined in the *Act* nor in the *Police Services Act* [the *PSA*]. The *PSA* provides the primary statutory base for the existence of the Ontario Provincial Police and provides for the police service's composition, authority, jurisdiction, discipline and other pertinent matters.

Some insight as to what policing involves can be found in Sections 1 and 42 of the *PSA* which state:

1. Police services shall be provided throughout Ontario in accordance with the following principles.

1. They need to ensure the safety and security of all persons and property in Ontario.
2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.

...

42. The duties of a police officer include,

...

(b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;

...

(c) laying charges and participating in prosecutions;

The Ministry submits that the Ontario Provincial Police officers seconded to the Casino Enforcement Unit (CEU) were engaged in law enforcement in respect to the assistance they provided as a result of the incident involving the appellants.

Specifically with respect to section 14(1)(d) the Ministry submits:

The exemption provided by section 14(1)(d) may apply in two different sets of circumstances, namely, where disclosure could reasonably be expected to:

- (1) disclose the identity of a confidential source of information in respect of a law enforcement matter, or
- (2) disclose information furnished only by the confidential source.

The Ministry submits that the records ... contain information that was provided by confidential sources. As evidenced by the content of the records ..., the circumstances of the incident that resulted in the arrest of the appellants are highly sensitive. The free exchange of necessary information between law enforcement officers and other parties is a necessary and vital component of law enforcement investigations. The confidential sources of information in respect to this incident would reasonably have expected that the information provided would be kept as confidential as circumstances would permit.

I accept the Ministry's submissions that the Ontario Provincial Police officers seconded to the Casino Enforcement Unit (CEU) were engaged in law enforcement with respect to the assistance they provided as a result of the incident involving the appellants and that they were acting under the authority of the *PSA* to "ensure the safety and security of all persons and property in Ontario". The records all relate to an investigation which could have led to proceedings in a court and in such proceedings, if they occurred, sanctions could be imposed.

The question remains whether the records could reasonably be expected to: (1) disclose the identity of a confidential source of information in respect of a law enforcement matter, or (2) disclose information furnished only by the confidential source.

I am not persuaded by the Ministry's arguments in this regard. As noted above, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the Ministry must provide detailed and convincing evidence to establish a reasonable expectation of the harm. Further, the Ministry must provide evidence of the circumstances in which the informant provided the information to the institution in order to establish confidentiality [Orders P-139, PO-1747, and MO-1383].

The Ministry has not provided any specific evidence or an explanation as to why section 14(1)(d) applies in this case. The statements quoted above from the Ministry's representations are extremely general and do not provide any detailed explanation of how the exemption relates to the records. I have reviewed the information in the records, and find no indication that any of it was received from a confidential source. Other than the appellants, these records do not name or identify any individual who is not a Casino employee or a police officer. No evidence has been provided to me to the effect that any of these individuals were functioning in a covert manner, nor is there any other explanation of how they qualify as confidential sources.

In the circumstances of this appeal, therefore, I find that Casino employees and police officers, who are the only individuals other than the appellants mentioned in the records, and the only individuals who appear to have provided information, cannot be considered confidential sources.

For this reason, the records do not qualify for exemption under section 14(1)(d), and that section provides no basis for exempting them under section 49(a).

Section 14(1)(i)

The Ministry's submissions regarding this exemption were primarily directed at the videotape, which is no longer at issue. The Ministry submits as follows regarding this exemption:

The records reveal information regarding security control procedures and protocols required for protection of casino assets and the security of the gaming environment. ... The Ministry concurs with the casino's position that release of such information has the potential to compromise the protocols established to ensure the protection of casino assets and staff. ... Public release of such information may reasonably be expected to jeopardize the ongoing security of the gaming environment at the casino.

The Casino makes similar submissions, referring to revealing "details of ... confidential procedures and protocols thereby undermining their integrity and endangering the established system for the protection of casino assets and personnel".

I am not persuaded by these submissions. I have reviewed the records, which consist of incident reports, person profiles and an occurrence report. Although these are forms that would routinely be used in connection with incidents of this nature, I do not agree that they disclose anything that could reasonably be described as "security provisions and protocols". The submissions of the Ministry and the casino are general and do not, in my view, establish that disclosure of the records could reasonably be expected to result in the harm addressed by section 14(1)(i).

I find that the records do not qualify for exemption under section 14(1)(i) and that section therefore provides no basis for finding them exempt under section 49(a).

As neither section 14(1)(d) or (i) applies, I find that section 49(a) does not apply. As no other exemptions have been claimed, I will order the records disclosed.

ADDITIONAL MATTER:

Appellants' new address

In their representations, the appellants advise that they have a new mailing address and ask that we correct our files for future reference. However, the appellants also request that their new address be kept in strict confidence. In order to obtain access to the information that is to be

disclosed by the Ministry, the appellants are asked to either contact the Ministry and advise them of their current address or, in the alternative, contact this office to advise whether they consent to this office providing their current address to the Ministry.

ORDER:

1. I order the Ministry to disclose pages 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 to the appellants by **September 27, 2005**.
2. I order the Ministry to issue a decision on access under Part III of the *Act*, with respect to the appellants request for access to a videotape of them being incarcerated in the holding cell, treating the date of this order as the date of the request, and without recourse to a time extension.
3. In order to verify compliance with Provision 2, I require the Ministry to provide me with a copy of the decision referred to in Provision 2.
4. In order to verify compliance with provision 1, I reserve the right to require the Ministry to provide me with copies of the records disclosed to the appellants pursuant to Provision 1.
5. In the event of any question concerning the delivery to the appellants of the records or the decision referred to in Order Provisions 1 and 2, the Ministry may contact this office for directions or assistance.

Original signed by: _____
John Higgins
Senior Adjudicator

_____ August 19, 2005