



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

ORDER PO-2970

Appeal PA10-230-2

Ministry of Community Safety and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for all records relating to the appellant, including certain specifically identified information.

In response to the request, the Ministry provided a decision to the appellant, granting partial access to the requested records. Access to some information was denied on the basis of the exemptions in sections 49(e) (confidential correctional record), and 49(a) (discretion to refuse requester's own information) in conjunction with sections 14(1)(l) and 14(2)(a) and (d) (law enforcement), 15(b) (relations with other governments) and 19 (solicitor-client privilege). The Ministry further advised that some information had been removed as it was not responsive to the request.

The appellant appealed the Ministry's decision.

During mediation, the Ministry confirmed that there were 142 pages of records responsive to the request. The appellant confirmed that he was not pursuing access to certain records which he already had in his possession. He also confirmed that certain records and the severed portions of other records were no longer at issue.

Also during mediation, the Ministry decided to reconsider its initial decision, and to grant access to additional records. It issued a supplemental decision letter to the appellant, advising that access was granted to a number of additional records or portions of records.

Mediation did not resolve the issues regarding access to some remaining records, and this file was transferred to the inquiry stage of the process.

I sent a Notice of Inquiry identifying the facts and issues in this appeal to the Ministry, initially.

Following receipt of the Notice of Inquiry, the Ministry decided to disclose some additional records or portions of records to the appellant. The Ministry wrote to the appellant and advised that access was now being granted to information contained on six additional pages. In that decision letter, the Ministry also indicated that it was now relying on the exemption in section 14(1)(i) to deny access to certain pages remaining at issue.

The Ministry then provided representations in response to the Notice of Inquiry. In its representations, the Ministry indicated that it was no longer relying on the exemptions in sections 14(2)(a), 14(2)(d), 19 and 49(e) in relation to the records remaining at issue. Those sections are, accordingly, no longer at issue in this appeal.

After receiving the Ministry's representations, I sent a modified Notice of Inquiry, along with a complete copy of the representations of the Ministry, to the appellant. The appellant did not provide representations to me. However, the appellant had provided me with information and documentation in reference to this file after I had sent the Notice of Inquiry to the Ministry, and I have reviewed that information in making my decision in this appeal.

Subsequently, the Ministry sent correspondence to me in which it identified that, after consulting with the Royal Canadian Mounted Police (RCMP), it was releasing additional records to the appellant. The Ministry also provided me with a copy of the letter and additional material sent to the appellant.

As a result of the mediation and the additional disclosure provided to the appellant during the inquiry stage of this appeal, the only records that remain at issue are portions of three pages and five lines on an additional page. All of this information relates to Canadian Police Information Centre (CPIC) query format information or access and/or transmission codes. Furthermore, I note that the results of the CPIC queries (except for certain access and transmissions codes) have been disclosed to the appellant, and are not at issue in this appeal.

RECORDS:

The records remaining at issue consist of computer printout queries contained in the withheld portions of pages 42, 43 and 45, and page 59.

As indicated above, all of this information relates to CPIC access and/or transmission codes, as well as CPIC query format information, and does not include the results of the CPIC queries (except for certain access and transmissions codes) which have been disclosed to the appellant.

In addition, I note that the undisclosed portions of page 45 are duplicated in the undisclosed portions of page 42. Because this information is a duplicate copy of the information on page 42, I will only review the application of the exemptions to the severed portions of page 42, and will not separately review the undisclosed portions of page 45.

DISCUSSION:

PRELIMINARY ISSUE

As noted above, during the inquiry stage of the process, the Ministry for the first time raised the possible application of the exemption in section 14(1)(i) to the records at issue. As a result, I identified the issue of the late raising of a discretionary exemption in this appeal. However, as a result of my findings, set out below, it is not necessary for me to review this preliminary issue in this order.

PERSONAL INFORMATION

The personal privacy exemption in section 49(a) applies only to information that qualifies as personal information. The term “personal information” is defined in section 2(1) of the *Act*, in part, as recorded information about an identifiable individual, including 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 [paragraph (h)].

The Ministry takes the position that the records remaining at issue contain the personal information of the appellant as defined in paragraphs (a), (b) (d) and (h) of the definition set out in section 2(1) of the *Act*.

On my review of the records at issue, I am satisfied that they contain the personal information of the appellant. Pages 42 and 43 contain the appellant's name as well as other information relating to him [paragraph (h)]. Furthermore, although the five lines at issue on page 59 consist solely of CPIC query information and do not include the appellant's name or other information clearly identifying him, because of the wording of the request and because the previous pages contain the appellant's personal information, I am satisfied that page 59 also contains the personal information of the appellant.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

While section 47(1) of the *Act* gives individuals 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.

Under section 49(a), the institution has the discretion to deny an individual access to his or her own personal information where the exemptions in sections 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that information.

In this case, the Ministry relies on section 49(a) in conjunction with sections 14(1)(i), 14(1)(l) and 15(b) to deny access to the record.

Section 14(1)(l): commission of an unlawful act or control of crime

Sections 14(1)(l) reads:

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

- (l) facilitate the commission of an unlawful act or hamper the control of crime.

The term "law enforcement" is used in several parts of section 14(1). I have found above that the record at issue in this appeal was prepared in the course of law enforcement, and that the OPP is an agency which has the function of enforcing and regulating compliance with the law.

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 14(1)(e), where section 14 uses 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 (Workers' 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-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

In its submissions that Ministry identifies that the records remaining at issue consist of CPIC access/transmission codes as well as CPIC query format information. It states:

The Ministry submits that the release of CPIC access/transmission codes, as well as CPIC query format information, has the potential to compromise the integrity and ongoing security of the CPIC system and facilitate unauthorized access to the CPIC system.

CPIC is a computerized system that provides the law enforcement community with informational tools to assist in combating crime by providing information on crimes and criminals. CPIC is operated by the RCMP under the stewardship of National Police Services, on behalf of the Canadian law enforcement community. Unauthorized access to the CPIC system has the potential to compromise investigations and other law enforcement activities and the privacy and safety of individuals.

With respect to the exemption in section 14(1)(l), the Ministry states:

It is the view of the Ministry that disclosure of this information may reasonably be expected to facilitate the commission of an illegal act or hamper the control of crime.

The Ministry has applied section 14(1)(1) to exempt from disclosure CPIC computer transmission/access codes, as well as CPIC query format information.

Disclosure of this information may reasonably be expected to leave the CPIC computer system more vulnerable to security breaches. Security breaches could lead to data corruption, compromise data integrity and result in unauthorized/illegal disclosures of confidential law enforcement and personal information.

The Ministry notes that Adjudicator Donald Hale in Order P-1214 determined that similar information met the requirements for exemption pursuant to section 14(1)(1). Adjudicator Hale stated:

...the disclosure of the transmission access codes for the CPIC system which have been severed from Page 5 of the Police records could reasonably be expected to facilitate the commission of an unlawful act, the unauthorized use of the information contained in the CPIC system.

As identified above, the appellant did not provide representations in response to the Notice of Inquiry sent to him, and did not comment on the Ministry's representations. In the material provided by the appellant to me earlier in the process, and appellant draws my attention to two specific concerns. One relates to a request the appellant made for records from the court system. The other relates to a recent decision of the Ontario Court of Appeal relating to certain correctional records. Neither of these concerns raised by the appellant address the issue in this appeal, which is whether section 14(1)(l) applies to CPIC codes or query format information.

Findings

On my review of the representations of the parties and the portions of records remaining at issue, which consist solely of CPIC codes and query format information, I am satisfied that this information qualifies for exemption under section 14(1)(l) of the *Act*.

Previous orders of this office have addressed the issue of whether section 14(1)(l) applies to this type of information, and have found that it does. For example in Order MO-1335, Adjudicator David Goodis reviewed the application of the equivalent to section 14(1)(l) found in the *Municipal Freedom of Information and Protection of Privacy Act*, and stated:

Where information could be used by any individual to gain unauthorized access to the CPIC database, an important law enforcement tool, it should be considered exempt under [section 14(1)(l)]. ...

Other orders have found that CPIC access codes, ORI numbers, or other information which could compromise the security and integrity of the CPIC computer system qualify for exemption under section 14(1)(l) (see, for example, Orders M-933, MO-1004, MO-1929).

The Ministry has stated that the release of CPIC access/transmission codes, as well as CPIC query format information, has the potential to compromise the integrity and ongoing security of the CPIC system and facilitate unauthorized access to the CPIC system. On my review of the portions of records remaining at issue, I am satisfied that it consists of CPIC access and/or transmission codes, as well as CPIC query format information. Some of the severed information is specific transmission, access or ORI codes. Although a few other severed numbers are not numbers of that nature, based on the representations of the Ministry I am satisfied that they, too, relate to access to the CPIC system. Other information consists of the format of the queries and the manner in which this information is input by the Police operator. Although some small portions of this information contain certain identifiers of the appellant, I find that there is no purpose served in severing these small items of information, as they are clearly known to the appellant and duplicated in other portions of the disclosed records, and such severance would reveal only "disconnected snippets" or meaningless or misleading information. [See Orders PO-

2033-I, PO-1735 and MO-2139, and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)].

Accordingly, subject to my review of the Ministry's exercise of discretion below, I find that the withheld portions of the records remaining at issue qualify for exemption under section 49(a) in conjunction with section 14(1)(l) of the *Act*.

EXERCISE OF DISCRETION

The section 14(1)(l) and 49(a) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations (Order MO-1573). This office may not, however, substitute its own discretion for that of the institution (section 43(2)).

Relevant considerations

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant (Orders P-344, MO-1573):

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information

- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

Representations

In the Ministry's representations in support of its position that it properly exercised its discretion to apply the exemptions in this case, it states that it is mindful of the major purposes and objects of the *Act*, and that it considers each request for access to information on an individual, case-by-case basis. The Ministry then states:

In the circumstances of this particular request, the Ministry decided to exercise its discretion to release a substantial portion of the requested information to the appellant. In this regard, the Ministry has issued a total of three decision letters disclosing as much information as possible to the appellant.

The Ministry carefully weighed the appellant's right of access to the withheld portions of the records at issue and considered disclosing the information notwithstanding that discretionary exemptions from disclosure apply.

The Ministry is aware that the appellant is an individual who is seeking access to records that contain his own personal information. In its exercise of discretion, the Ministry carefully considered the potential benefits to the appellant should additional information be disclosed. ...

Given the nature of the information remaining at issue, the Ministry was satisfied that release of this information would result in law enforcement harms.

Disclosure of the information remaining at issue may reasonably be expected to compromise the security and integrity of the CPIC system and facilitate the commission of an illegal act. The Ministry in its exercise of discretion took into consideration the fact that confidentiality of law enforcement information in some contexts is necessary for the protection of public safety interests.

The Ministry ultimately came to the conclusion in its exercise of discretion that the release of the information remaining at issue in the circumstances of the appellant's request was not appropriate.

On my review of all the circumstances in this appeal, I am satisfied that the Ministry has not erred in exercising its discretion not to disclose the portions of the records at issue, as it has not done so in bad faith or for an improper purpose, nor has it taken into account irrelevant considerations or failed to take into account relevant ones. I also find that its decision to disclose additional records and portions of records during the inquiry stage of this appeal, and to only withhold CPIC access and/or transmission codes, as well as CPIC query format information, is a relevant consideration in my decision that the Ministry properly exercised its discretion in the circumstances.

Accordingly, I find that the Ministry properly exercised its discretion to apply the exemptions in sections 49(a) and 14(1)(l) to the information at issue in this appeal.

ORDER:

I uphold the Ministry's decision, and dismiss the appeal.

Original Signed By: _____ May 19, 2011
Frank DeVries
Adjudicator