



Information and Privacy
Commissioner/Ontario

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

ORDER 198

Appeal 890317

Ministry of the Solicitor General



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September 7, 1990

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order No. 198
Ministry of the Solicitor General
Appeal Number 890317

This letter constitutes my Order in your appeal of the decision by the Ministry of the Solicitor General (the "institution"), to refuse to confirm or deny the existence of a record requested under the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act"). On January 5, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

On July 20th, 1989, the institution received your request for access to any documents in the possession of the institution or the Ontario Police Commission relating to your client. In a letter to you dated July 28th, 1989, the institution's Freedom of Information and Privacy Co_ordinator (the "Co_ordinator") confirmed your agreement to clarify your request. As a result, your request was separated into three requests. The request which is the subject of this appeal was identified as Application No. 3.

On September 22, 1989, the Co_ordinator responded to your request by indicating that the existence of the requested record could not be confirmed or denied in accordance with subsection 14(3) of the Act. On October 13, 1989, you appealed the

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decision of the Co_ordinator to this office. Notice of the appeal was given to you and the institution on October 17th, 1989.

As you know, as soon as your appeal was received, an Appeals Officer was assigned to investigate the circumstances of the appeal and attempt to mediate a settlement.

The institution was advised by the Appeals Officer that since the request related to your client's personal information, section 49 should have been cited along with subsection 14(3) of the Act in the institution's original written response. As you know, the inclusion of this section as a basis of its decision was acknowledged by the institution.

Settlement of the issues arising in this appeal was not achieved during mediation. Accordingly, an Appeals Officer's Report was prepared and sent to you and the institution together with a Notice of Inquiry. You and the institution were asked to make representations concerning the subject matter of this appeal. Representations were received from you and the institution. I have considered the representations in reaching my decision.

The purposes of the Act as set out in section 1 should be noted at the outset. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter_balancing privacy protection purpose of the Act. This provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide individuals with a right of access to their own personal information.

It should also be noted that section 53 of the Act provides that the burden of proof that a record or part of a record falls within one of the specified exemptions lies upon the head.

I am satisfied that a record of the nature requested, if it existed, would contain personal information about your client as defined in subsection 2(1) of the Act.

Subsection 47(1) of the Act gives individuals a general right of access to any personal information about the individual in the custody or under the control of an institution. However, this

right of access under subsection 47(1) is not absolute. Section 49 provides a number of exceptions to this general right of access to personal information by the person to whom it relates.

Section 49(a) of the Act states:

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; (emphasis added)

In this appeal, the institution has refused to confirm or deny the existence of a record of the nature requested pursuant to subsection 14(3).

Subsection 14(3) of the Act provides that:

A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.

Before deciding whether the institution has properly applied subsections 14(3) and 49(a), I must determine whether a record of the nature requested, if it existed, could be exempt from disclosure pursuant to either subsection 14(1) or (2) of the Act.

Subsections 14(1) and (2) read as follows:

A head may refuse to disclose a record where 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;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (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;

- (e) endanger the life or physical safety of a law enforcement officer or any other person;
 - (f) deprive a person of the right to a fair trial or impartial adjudication;
 - (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
 - (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
 - (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;
 - (j) facilitate the escape from custody of a person who is under lawful detention;
 - (k) jeopardize the security of a centre for lawful detention; or
 - (l) facilitate the commission of an unlawful act or hamper the control of crime.
- (2) A head may refuse to disclose a record,
- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
 - (b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;
 - (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any

person who has been quoted or paraphrased in the record to civil liability; or

- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

While considering your appeal, I was mindful of one of the purposes of the Act which states that, "necessary exemptions from the right of access should be limited and specific". After careful consideration of the institution's representations, I am satisfied that disclosure of a record of the nature requested, if it existed, could be refused under subsection 14(1).

Subsections 14(3) and 49(a) provide the head with the discretion to refuse to confirm or deny the existence of a record, if it has been established that either subsection 14(1) or (2) could apply to a record. In any case in which the head has exercised his/her discretion and refused to confirm or deny the existence of a record, I look very carefully at the manner in which the head has exercised this discretion. Provided that this discretion has been exercised in accordance with established legal principles, in my view, it should not be disturbed on appeal.

In this case, I find nothing improper in the way in which the head has exercised his discretion to refuse to confirm or deny the existence of a record of the nature requested and would not alter it upon appeal.

Accordingly, I uphold the decision of the head.

Yours truly,

Tom Wright
Assistant Commissioner

cc: The Honourable Steven Offer
Solicitor_General for the Province of Ontario

Ms Isabella McTavish
FOI Co_ordinator