

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-4495-I

Appeal PA23-00308

Ministry of the Solicitor General

March 5, 2024

Summary: The appellant made a request for records relating to the Premier's OPP security detail and the ministry denied the appellant access to officers' notes under the discretionary law enforcement exemption in section 14(1) of the *Act*. The appellant appealed the ministry's decision to the IPC. The ministry refused to provide records to the IPC. In this interim decision, the Assistant Commissioner orders the ministry to produce the records at issue to the IPC.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 52(4), 56(2) and 61(1)(d). Section 10.01 of the IPC's *Code of Procedure*.

OVERVIEW:

[1] The appellant, a member of the media, submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Solicitor General (the ministry) for the following records:

Records from the Premier's Ontario Provincial Police (OPP) security/protective detail. Specifically, notes from drivers and officers assigned to the Premier's detail, risk assessments, meeting preparations or summary plans prepared by OPP staff in relation to any meetings held by the Premier at [a named restaurant]. Please include any responsive OPP records that would indicate who was present at any meetings.

[2] The ministry located responsive records and issued a decision to the appellant denying access to them. The ministry withheld the records, which are eight pages of officers' notes, under the law enforcement exemptions in sections 14(1)(c) (investigative techniques and procedures), (e) (endanger life or physical safety), (i) (endanger security of a building/vehicle or procedure established for the protection of items), and (l) (facilitate commission of unlawful act or hamper the control of crime) and the mandatory personal privacy exemption in section 21(1) of the *Act*.

[3] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] Mediation did not resolve the issues and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. The adjudicator with carriage over the appeal began the inquiry by inviting the ministry to submit representations in response to a Notice of Inquiry. The ministry submitted representations. In its representations, the ministry withdrew its sections 14(1)(c) and 21(1) claims. Accordingly, these exemptions are no longer at issue. The adjudicator then sought and received representations from the appellant in response to the Notice of Inquiry and the ministry's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure* (the *Code*).

[5] During mediation, the ministry advised the mediator it would not provide a copy of the records to the IPC. Instead, for the purpose of mediation only, the mediator agreed to attend in person at the ministry's offices to view the records. In the Notice of Inquiry, the adjudicator asked the ministry to provide a copy of the records. In response, the ministry stated,

The Ministry has been asked on page 2 of the Notice of Inquiry to provide a copy of the responsive records to the IPC. Due to the unusual sensitivity of these records, the Ministry requests that it be specifically required by order to produce records for examination purposes in accordance with sections 52(4) and (5) of the [*Act*], in accordance with section 10.01 of the [*Code*], and sections 5 and 7 of Practice Direction 1 made pursuant to the *Code*. We request that any examination by the Adjudicator of the records occur at OPP or Ministry premises.

[6] In Interim Order PO-4477-I, the adjudicator ordered the ministry to provide a copy of the records to the IPC so the IPC may conduct an inquiry into the appeal. However, the records at issue are subject to the section 14 exemption claim. As such, under section 56(2) of the *Act*, only the Commissioner or the Assistant Commissioner has the power to require a record to be produced to the IPC and examined.

[7] Given these circumstances, I order the ministry to provide the IPC with a copy of the records so that the IPC may conduct an inquiry into this appeal.

RECORDS:

[8] There are eight pages of officers' notes at issue.

DISCUSSION:

[9] I have reviewed the circumstances of this appeal, and I have decided to order the ministry to produce the records at issue in the appeal to the IPC for the purpose of conducting an inquiry under the *Act* under section 56(2) of the *Act*. I make this decision to ensure the IPC is able to properly review the records and conduct an inquiry into this appeal.

[10] Under section 52(4) of the *Act*, the Commissioner may require the production of any record. This section states,

In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

[11] Under section 61(1)(d) of the *Act*, no person shall wilfully obstruct the Commissioner in the performance of her functions under the *Act*. This includes a demand for the production of any records for the purposes of conducting an inquiry.

[12] In addition, section 10.01 of the *Code* sets out the procedure for providing records to the IPC. Specifically, it states,

Where the IPC determines that copies of records are required to process an appeal, it may send a written request for the records to the institution, including the date by which the records are to be received. Where an institution fails to provide the records, or any of them, within the specified time, the IPC may issue an order requiring the institution to produce the records to the IPC, without inviting representations from any party on this issue.

[13] However, section 56(2) of the *Act* sets out an exception regarding the production of records that are withheld under either section 12 (solicitor-client privilege) or 14(1). The ministry claims the records at issue are exempt under sections 14(1)(e) (endanger life or physical safety), (i) (endanger security of a building/vehicle or procedure established for the protection of items), and (l) (facilitate commission of unlawful act or hamper the control of crime) of the *Act*.

[14] Section 56(2) of the *Act* states,

The Commissioner shall not delegate to a person other than an Assistant Commissioner his or her power to require a record referred to in section 12 or 14 to be produced or examined.

[15] The IPC requested the records from the ministry in accordance with section 10.01 of the *Code*. As set out above, the ministry refused to provide the IPC with copies of the records, stating:

Due to the unusual sensitivity of these records, the Ministry requests that it be specifically required by order to produce records for examination purposes in accordance with sections 52(4) and (5) of the [*Act*], in accordance with section 10.01 of the [*Code*], and sections 5 and 7 of Practice Direction 1 made pursuant to the *Code*.

[16] The ministry takes the position that the information in the records is "unusually sensitive" in nature. The ministry provided no explanation as to what it meant by "unusually sensitive." Without a copy of the records, it is unclear what the ministry's description means. The ministry has not offered any further explanation as to why the records can not be provided. Accordingly, I find the ministry's description of the records as "unusually sensitive" does not establish a reasonable explanation as to why they cannot be provided to the IPC.

[17] While I acknowledge the ministry's section 14(1) arguments, the IPC cannot determine whether the records are exempt from disclosure without the production of the records to the IPC for review. I also acknowledge the ministry's position that the information in the records is "unusually sensitive" and that the disclosure of the information in the records could be expected to cause the harms contemplated in sections 14(1)(e), (i) and (l). However, I find neither of these arguments form a basis to conclude the records should not be provided to the IPC for the purpose of conducting an inquiry under the *Act*.

[18] The ministry asked the adjudicator to view the records at the ministry's office. However, given the circumstances of this appeal and the nature of the records, it is required that the ministry produce a copy of the records to the IPC.

ORDER:

In accordance with sections 52(4) and 56(2) of the *Act*, I order the ministry to provide a copy of the records at issue in Appeal PA23-00308 to the IPC by **March 19, 2024**.

Original Signed By: _____
Warren Mar
Assistant Commissioner

March 5, 2024
