



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

# ORDER P-390

Appeal P-9200577

Ministry of Transportation



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Ministry of Transportation (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act, (the Act), for access to a copy of "the investigation report, and all material related thereto" which resulted from an investigation by the Ministry into certain complaints made against a company that holds licences issued pursuant to the Truck Transportation Act, (the TTA). The Ministry denied the requester access to the information pursuant to sections 14(2)(a), (b) and (c) and 17(1)(a), (b) and (c) of the Act. The requester appealed the Ministry's decision.

During mediation, the appellant narrowed his request to a nine page investigation report. Further mediation was not possible, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry and the company which was the subject of the investigation (the affected party). Written representations were received from all parties that received the notice.

To assist in understanding the issues arising in this appeal, I thought it would be useful to provide some background information. The original complaints received by the Ministry alleged that the Registrar of Motor Vehicles was obliged to cancel a portion of the affected party's operating licences because it had failed to provide transportation services for a continuous period of one year - contrary to sections 27(1)(a) and (b) of the TTA.

At the request of the Registrar of Motor Vehicles, the Investigation Section of the Ministry's Carrier Control Office conducted an investigation after which the Registrar decided not to exercise his discretion - provided for in section 27 of the TTA - to cancel part of the operating licences.

The record at issue in this appeal is a report that was prepared in the course of the investigation and submitted to the Registrar by an Enforcement Officer employed at the Ministry's Carrier Control Office.

## ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the discretionary exemptions provided by sections 14(2)(a), (b) or (c) apply to the record at issue.
- B. Whether the discretionary exemptions provided by section 17(1)(a), (b) or (c) apply to the record at issue.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the discretionary exemptions provided by sections 14(2)(a), (b) or (c) apply to the record at issue.**

The Ministry submits that the exemption provided for in section 14(2)(a) applies to the entire record. Section 14(2)(a) reads:

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;

For a record to qualify for exemption under section 14(2)(a) of the Act, the Ministry must satisfy each part of the following three part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Order 200]

I have considered the record at issue in this appeal and have concluded that it meets all three parts of the test. The record clearly qualifies as a report as it summarizes the investigation, makes findings of fact and draws conclusions about the validity of the complaint received by the Registrar. Further, the record was prepared in the course of an investigation carried out pursuant to section 24 of the TTA. Finally, the record was prepared by an Enforcement Officer from the Carrier Control Office of the Ministry of Transportation, the agency which has the function of enforcing and regulating compliance with the TTA. I therefore find that the record qualifies for exemption pursuant to section 14(2)(a) of the Act.

Section 14 of the Act is a discretionary exemption. It is my responsibility to ensure that the Ministry has properly exercised its discretion in deciding not to grant access to the record. In

reviewing the head's exercise of discretion in favour of refusing to disclose the record, I have found nothing to indicate that the exercise of discretion was improper, and would not alter it on appeal.

Since I have found that the section 14(2)(a) exemption applies, it is not necessary for me to consider Issue B.

**ORDER:**

I uphold the Ministry's decision.

Original signed by:  
Tom Wright  
Commissioner

December 22, 1992