



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

ORDER P-410

Appeal P-9200430

Ministry of Consumer and Commercial Relations



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 Consumer and Commercial Relations (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a 1989 report filed by the Cemeteries Branch of the Ministry regarding Fort Erie cemeteries.

The Ministry disclosed to the requester two pieces of correspondence relating to the request and denied access to other records claiming section 14(2)(a) of the Act.

The requester appealed the Ministry's decision. During discussions with the Appeals Officer, the Ministry added section 21 to exempt parts of the records at issue.

Mediation was not successful, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry and an affected person. Written representations were received from the Ministry and the appellant.

The records at issue in this appeal are two internal memoranda prepared by an investigator in the Ministry's Investigations & Enforcement Branch. The first memorandum is a thirteen-page document dated August 27, 1990, from the investigator to the Acting Manager of the Branch concerning his investigation of alleged irregularities at the Fort Erie Cemetery. The second memorandum, is a four-page document dated March 6, 1992, from the investigator to the Manager of the Branch, and is a summary of the first memorandum.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to the records.
- B. Whether any of the information contained in the records qualifies as "personal information", as defined by section 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the mandatory exemption provided by section 21 applies to the records.

SUBMISSIONS/CONCLUSIONS:

- A: Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to the records.**

The Ministry submits that section 14(2)(a) applies to the records. Section 14(2)(a) reads:

A head may refuse to disclose a record,

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.

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The Ministry, through its Cemeteries Branch, enforces and regulates compliance with the Cemeteries Act which contains provisions concerning the operation of cemeteries and the interment of human remains. Failure to comply with the provisions of the Cemeteries Act or Regulations issued under it, may result in prosecution in the Ontario Court (Provincial Division) where a penalty may be imposed.

I have considered the records at issue in this appeal and, in my view, both records meet all three parts of the test. Each record qualifies as a report as it consists of summaries of the investigation of alleged violations of the Cemeteries Act, findings of fact by the investigator, conclusions about the validity of the complaints and recommendations as to alternatives to deal with the matter. Further, the records were prepared in the course of investigations conducted pursuant to the Cemeteries Act, with a purpose to determine if grounds existed for prosecution under the Cemeteries Act. Finally, the records were prepared by an investigator with the Investigations and Enforcement Branch of the Ministry, which has the function of enforcing and regulating compliance with the Cemeteries Act. I therefore find that the records qualify for exemption pursuant to section 14(2)(a) of the Act.

Section 14 of the Act is a discretionary exemption. In reviewing the Ministry's exercise of discretion in favour of refusing to disclose the records, 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 Issues B and C.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ February 12, 1993