



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

# **ORDER P-1011**

**Appeal P-9500268**

**Ministry of Labour**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant is a corporation, one of whose employees was injured in a burn accident at the corporation's premises. The Ministry of Labour (the Ministry) is conducting an investigation into the accident. The appellant, by its counsel, submitted a request to the Ministry for ten specific categories of information relating to the Ministry's investigation.

The Ministry's response to the request indicated that the investigation report was not yet complete, but that when completed it would be exempt under section 14(2)(a) of the Act. The Ministry also advised the appellant that the investigation was still underway, and that the records created to date were being withheld on the basis of the exemption provided by section 14(1)(a). Both of these exemptions pertain to law enforcement.

The appellant filed an appeal disputing the application of the section 14(1)(a) exemption to the existing records.

During mediation, the Ministry raised the possible application of the section 21(1) exemption (invasion of privacy). Because it is a mandatory exemption, it became an issue in this appeal.

A Notice of Inquiry was sent to the appellant and the Ministry, inviting them to make representations on the issues in this appeal (including the possible application of section 21(1)). Representations were received from the Ministry only.

In its representations, the Ministry raised the possible application of the section 14(1)(b) exemption, and made arguments about why this exemption should be considered at this stage of the appeals process. Normally, new discretionary exemptions cannot be claimed during an appeal unless this is done within thirty-five days after the Confirmation of Appeal is mailed out. Because of the way I will determine the application of the section 14(1)(a) exemption, it is not necessary for me to consider whether or not to permit the Ministry to claim section 14(1)(b).

The records at issue are as follows:

1. Event Information Form
2. Notice of Accident
3. Accident Investigation Report of Health and Safety Co-ordinator
4. Waterloo Regional Police Report
5. Police photographs (photocopies)
- 6 and 7. Industrial Health and Safety Program Reports (2)
8. Literature on protective industrial garments
- 9 and 10. Witness statements (2)
11. IHSP Officer's notes to date request was received by the Ministry
- 12 and 13. Premise/Project forms (2).

The Ministry submits that the appellant already has copies of Records 2, 3, 6, 7 and 8 and that these should not be considered in this order. However, I have no confirmation from the appellant that this is so, and accordingly, I consider these records to be at issue. Therefore, I will address them in this order.

## **DISCUSSION:**

### **LAW ENFORCEMENT**

Section 14(1)(a) of the Act states as follows:

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

interfere with a law enforcement matter.

In order to qualify for exemption under this section, the matter must satisfy the definition of “law enforcement” in section 2(1) of the Act. This definition states:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The Ministry submits that its investigation is being conducted under the Occupational Health and Safety Act (the OHSA), whose enforcement is within its mandate, and that violations of the OHSA can lead to prosecutions. Where prosecution occurs, the trial is conducted in the criminal courts, and fines can be imposed on both corporate and individual defendants in such proceedings. These submissions are consistent with the provisions of the OHSA, and I find that the definition of “law enforcement” has been satisfied in connection with the investigation and the records at issue.

With respect to the provisions of section 14(1)(a) itself, the Ministry must establish that disclosure could reasonably be expected to interfere with an ongoing law enforcement matter (Order P-403).

The Ministry submits that the investigation is ongoing, and provides a memorandum from the inspector confirming that this is the case. The Ministry also submits that premature disclosure of the records at issue could reasonably be expected to interfere with the investigation. Given the status of the matter as explained in the inspector’s memorandum, I accept this submission in the circumstances of this appeal. Therefore, I find that the exemption provided by section 14(1)(a) applies to all the records at issue.

In correspondence to the Appeals Officer, the appellant's counsel has submitted caselaw with respect to disclosure of Prosecution Approval and Prosecution Information documents. However, no such records are at issue in this appeal, and therefore the caselaw submitted does not pertain to this case.

Because I have found that the records at issue are exempt under section 14(1)(a), it is not necessary for me to consider the application of section 21(1).

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_ September 29, 1995