



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1119

Appeal P_9500615

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 Ministry of Labour (the Ministry) received a request for copies of all reports from the investigation of an industrial accident which occurred on May 17, 1995 and resulted in the death of two individuals.

The Ministry denied access to the record, in its entirety, claiming the application of the following exemption contained in the Act:

- law enforcement - section 14(2)(a)

A Notice of Inquiry was sent to the appellant and the Ministry. Because the record appeared to contain the personal information of identifiable individuals, the Appeals Officer raised the possible application of section 21(1) of the Act (invasion of privacy) in the Notice of Inquiry. Representations were received from both parties.

In its representations, the Ministry raised the possible application of section 17 of the Act (third party information).

DISCUSSION:

LAW ENFORCEMENT

The Ministry claims that the record qualifies for exemption under section 14(2)(a) of the Act, which states:

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.

In Order 221, Commissioner Tom Wright made the following comments about Part 1 of the test:

The word "report" is not defined in the Act. However, it is my view that in order to satisfy the first part of the test, i.e. to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

I agree. The record describes the reason why the investigation was initiated, the summary of the investigation, findings of fact, conclusions and recommendations. The appendices form an integral part of the record and relate directly to the account of the results of the collation and consideration of information. On this basis, I find that the record constitutes a "report" for the purposes of section 14(2)(a) of the Act, meeting part one of the test.

I am also satisfied that the record was prepared in the course of an investigation into an industrial accident conducted under the authority of the Occupational Health and Safety Act (the OHSA). In Order P-1011, Inquiry Officer John Higgins determined that an investigation conducted under the provisions of the OHSA satisfies the definition of "law enforcement" found in section 2(1) of the Act. I agree with this conclusion and adopt it for the purposes of this appeal. Accordingly, Part 2 of the test has been met.

Finally, it is clear that investigations under the OHSA are within the mandate of the Ministry. Moreover, the Ministry has the statutory authority to enforce and regulate compliance with the OHSA. Therefore, Part 3 of the test has also been met. Accordingly, I find that the Ministry has met the requirements for exemption under section 14(2)(a).

I have reviewed the representations submitted by the appellant and I am of the view that the matters he has raised do not affect the application of section 14(2)(a).

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

February 7, 1996