



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

# **ORDER P-1140**

**Appeal P-9500557**

**Ministry of the Solicitor General and Correctional Services**



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## **NATURE OF THE APPEAL:**

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a videotape made by the Ontario Provincial Police during the execution of a search warrant on the requesters' property. The Ministry denied access to the videotape. The requesters appealed the decision to deny access.

The Ministry denied access to the record on the basis of the following exemptions contained in the Act:

- law enforcement - sections 14(1)(a) and (b) and section 14(2)(a)
- facilitate commission of unlawful act - section 14(1)(l)
- discretion to refuse requester's own information - section 49(a)

A Notice of Inquiry was sent to the appellants and the Ministry. Representations were received from the Ministry only. Subsequently, the appellants, who reside outside of Canada, notified the Commissioner's office that they had not received the Notice of Inquiry. A copy of the Notice of Inquiry was sent to the appellants by registered mail and representations were received from the appellants.

In its representations, the Ministry indicated that it was no longer relying on sections 14(1)(l) and 14(2)(a) of the Act.

## **PRELIMINARY MATTER:**

In their representations, the appellants have made several comments. Not all of these concerns relate to the inquiry stage of this appeal. I will address only those comments which are relevant to the inquiry stage.

The appellants state that they received only 15 days instead of 21 days in which to submit their representations. They submit that the shorter timeframe resulted in their having to send their representations to the Commissioner's office by facsimile instead of by mail.

On December 1, 1995, a Notice of Inquiry was mailed to the appellants at the mailing address provided by them to this office. The Notice of Inquiry indicated that the date for submitting representations was December 22, 1995. On January 22, 1996, the Commissioner's office received a letter dated January 19, 1996 from the appellants indicating that they had not received the Notice of Inquiry and requesting that a copy be sent, this time by registered mail. On the same day (January 22, 1996), the Commissioner's office forwarded another copy of the Notice of Inquiry to the appellants, this time by registered mail. The appellants were given 15 days within which to make representations. Representations were received on February 6, 1996.

The Commissioner's office has established procedures to preserve the integrity of the process and to ensure that parties are provided with an opportunity to make representations on the issues. The letter of appeal was received by this office on September 18, 1995. The Confirmation of Appeal sent to the parties confirmed receipt of the appeal and advised that, in the interests of all the parties, it was the intention to resolve the appeal on or before January 20, 1996.

Where additional time is requested in writing or is necessitated by unforeseen circumstances as in the present case, it falls to the Commissioner or his delegated decision-maker to determine what is reasonable. In my view, the critical issue is whether the time frame of 15 days resulted in prejudice to the parties. The appellants have not provided any evidence of prejudice beyond having to use the facsimile process. In my view, the time allowed to the appellants for the submission of representations was reasonable in the circumstances of this appeal.

Secondly, the appellants state that the statutory provisions referred to in the Notice were not included. I have reviewed the Notice of Inquiry with its covering letter together with Appendix "A" to the Notice. I find that the exemptions relied upon by the Ministry are included. Some are reproduced in their entirety in the appendix. The remainder are paraphrased in the body of the Notice of Inquiry.

Thirdly, the appellants state that the issues in this appeal are not limited to the denial of access to the videotape. The appellants state that they also require information about the number of copies made of this videotape and to whom the copies were provided.

I have reviewed the request and in my view, it is clear that the request was for access to a copy of the videotape as well as information about the number of copies made and for whom. The decision letter from the Ministry addresses only the first component of the request. In my view, the Ministry has not provided an adequate decision letter in that the remaining two parts of the request have not been answered. I will therefore order the Ministry to provide a decision letter to the appellants responding to the request for information about the number of copies made and for whom the copies were made.

Finally, the appellants indicate that they wish to know the length of the videotape. The appellants submit that the police were on their property for a number of hours and they are of the view that the record should be anywhere from 2-4 hours in length. I have viewed the videotape in its entirety and it is approximately 50 minutes in length. The videotape is described in more detail in my discussion below.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have viewed the videotape to determine if it contains personal information and, if so, to whom that personal information relates. The videotape shows two individuals being handcuffed outdoors and then taken inside a dwelling and being seated. The two individuals are joined by a third person, also handcuffed. The three individuals are shown copies and then the original of the search warrants. The individuals are advised of their rights and are shown seated for about

the first 30 minutes. The videotape shows the search of the premises indoors and the search being continued outdoors and then moving indoors again. In the videotape, the three individuals are identified by name. I am satisfied that these three individuals are the appellants in this appeal.

In my view, the videotape contains the personal information of the appellants. While the videotape also shows police officers, some of whom are referred to by name, these individuals appear in their professional or employment related capacity, and therefore, none of the information in the videotape qualifies as their personal information.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a), the Ministry has the discretion to deny access to an individual's own personal information where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include the law enforcement exemptions under sections 14(1)(a) and (b) claimed to deny access to the videotape.

## **LAW ENFORCEMENT**

The Ministry claims that sections 14(1)(a) and (b) apply to the videotape. These sections read as follows:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In order for a record to qualify for exemption under this section, the matter to which the record relates must first satisfy the definition of "law enforcement". This term is defined in section 2(1) of the Act as follows:

- (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).

I find that the matter to which the videotape relates satisfies the definition of “law enforcement” as it concerns a police investigation into possible violations of the Criminal Code.

Section 14(1) also requires that disclosure of the videotape could reasonably be expected to result in one of the harms described in that section. The Ministry states that charges, including a warrant of arrest, resulting from the law enforcement matter remain outstanding and the matter has yet to come to trial. The Ministry submits that the videotape of the execution of the search warrant contains evidence which will be presented at trial and that disclosure of this information could reasonably be expected to interfere with a law enforcement matter.

I have carefully reviewed the representations of the parties together with the information in the videotape. I find that disclosure of the videotape could reasonably be expected to interfere with a law enforcement matter and therefore, the videotape qualifies for exemption under section 14(1)(a). Accordingly, I find that the videotape is exempt under section 49(a) of the Act.

### **ORDER:**

1. I uphold the decision of the Ministry.
2. I order the Ministry to issue a decision letter to the appellants, in response to access to the two remaining parts of the request, by **March 18, 1996**.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the decision letter provided to the appellants pursuant to Provision 2, by **March 18, 1996**. This should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ March 1, 1996