



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

ORDER P-1336

Appeal P_9600349

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Attorney General (the Ministry). The appellant, representing a particular First Nations community group, requested access to a report of the Special Investigation Unit (SIU) relating to the shooting death of a named individual. The Ministry identified a two-page report of the SIU Director as the responsive record and denied access to it on the basis that the record was a law-enforcement report (section 14(2)(a)), and that disclosure of the record constitutes an unjustified invasion of privacy (section 21(1)).

The requester appealed the Ministry's decision to deny access.

The requester (now the appellant) indicated that sections 11(1) and 23 of the Act are applicable in support of his position that a public interest exists in the disclosure of the record.

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties.

DISCUSSION:

APPLICATION OF SECTION 11(1) OF THE ACT

The appellant indicates that section 11(1) of the Act applies to support disclosure of the record. This section reads as follows:

Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Section 11 is a mandatory provision which requires the head to disclose records in certain circumstances. In Order 65, former Commissioner Sidney B. Linden found that the duties and responsibilities in section 11 of the Act belong to the head alone. I concur with former Commissioner Linden's interpretation of section 11 and adopt it for the purposes of this appeal. Accordingly, I find that the Information and Privacy Commissioner or his delegate do not have the power to make an order pursuant to section 11 of the Act.

LAW ENFORCEMENT REPORT

The Ministry has denied access to the record on the basis of 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.

In order for a record to qualify for exemption under section 14(2)(a) of the Act, the Ministry must satisfy each of the following three requirements:

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]

In Order 221, Commissioner Tom Wright made the following comments about part one 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 with this approach and will apply it to the record at issue in this appeal. The record is a two-page report from the Director of SIU to the Attorney General. The record describes the events occurring before and leading to the death of the named individual. The record also describes the events occurring after the death and details the investigation. Finally, the record contains the Director’s conclusion regarding the conduct of the police. In my view, the record consists of a formal account of the results of the consideration of the information related to the incident. On this basis, I find that the record qualifies as a “report” for the purposes of section 14(2)(a) of the Act, thus meeting the first requirement.

The SIU is established by section 113 of the Police Services Act (the PSA) and is charged with the investigation of “... the circumstances of serious injuries and deaths that may result from criminal offences committed by police officers” (section 113(5)). In its representations, the Ministry states that, in the event of such an incident, SIU investigators are dispatched to conduct an independent investigation with a view to determining whether any police officer may have committed a criminal offence in the circumstances. When the investigation is complete, a brief is submitted to the Director for review and determination. The Director, if reasonable grounds exist to do so, may cause informations to be laid against police officers in connection with the matters investigated and refers such informations to the Attorney General for prosecution. The Ministry states that under section 113(8) of the PSA, the Director is required to provide a report

of the results of the investigation to the Attorney General. The record at issue is the Director's report to the Attorney General.

On the basis of the foregoing, I find that the report was prepared in the course of a law enforcement investigation by the SIU, an agency which has the function of enforcing and regulating compliance with a law. Thus, the second and third requirements have been met and the record qualifies for exemption under section 14(2)(a) of the Act.

The appellant has provided submissions in support of his position that the record should be disclosed. However, I find that the report does satisfy the criteria necessary for exemption. The Ministry has also provided submissions on its exercise of discretion in deciding not to disclose the report and the reasons given accord with accepted legal principles.

Because of my finding above, I need not consider the application of section 21(1) of the Act.

The appellant has raised the possible application of section 23 of the Act. However, the exemption provided by section 14 is not included in the exemptions listed in section 23 and therefore, I will not consider section 23.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

January 23, 1997