



Information and Privacy
Commissioner/Ontario

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

ORDER P-1418

Appeal P_9700052

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a brief and an investigation report prepared by the Ministry's Special Investigations Unit (SIU). The records were prepared in relation to an SIU investigation of a motor vehicle accident in which the passenger in a car that had been pursued by the Metropolitan Toronto Police was killed. The requester represents the family of the deceased individual. The SIU investigated the accident and the police were cleared of any wrongdoing.

The Ministry granted access to a small portion of the responsive records and denied access to the remaining records, claiming the application of the following exemptions contained in the Act:

- facilitate commission of an unlawful act - section 14(1)(l)
- law enforcement - section 14(2)(a)
- invasion of privacy - section 21(1)

The requester appealed the Ministry's decision to deny access. Because the appeal was not resolved by mediation, a Notice of Inquiry was sent to the requester (now the appellant) and the Ministry. Representations were received from both parties to the appeal.

After the Notice of Inquiry was issued, the Ministry advised that five pages, including the one-page Director's Report, had not been provided to this agency and had not, therefore, been described in the Notice of Inquiry. Accordingly, the Appeals Officer contacted the appellant to advise him that because the Notice did not refer to these records, he was welcome to make further submissions on the possible application of the exemptions to them. The appellant confirmed that he did not wish to make additional representations.

RECORDS:

The records at issue consist of a one-page letter from the Director of the SIU to the Attorney General, the undisclosed portions of a 168-page Final Investigative Report prepared by two SIU investigators and 30 photographs taken at the scene of the motor vehicle accident by an SIU investigator.

DISCUSSION:

LAW ENFORCEMENT

The Ministry submits that section 14(2)(a) of the Act applies to the undisclosed portions of the Final Investigative Report, the Director's letter to the Attorney General and the photographs. Section 14(2)(a) 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 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.

[Orders 200, P-324 and P-1244]

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 records of fact. [emphasis added]

I adopt this approach for the purposes of this appeal. The Ministry submits that the Final Investigative Report of the SIU “... provides an overview of the incident and a description of the events prior to, during and subsequent to the occurrence. It also analyses the information and statements accumulated, and reaches a conclusion regarding the conduct of the police.”

The SIU was 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 have resulted from criminal offences committed by police officers” (section 113(5)). The Ministry states that when allegations about an incident involving police are raised, an independent investigation is conducted by SIU investigators with a view to determining whether any police officer may have committed a criminal offence. At the conclusion of the investigation, a brief is submitted to the Director of the SIU for review and determination. If reasonable grounds exist, the Director may cause an information to be laid against a police officer in connection with the matters investigated and refer such an information to the Crown Attorney for prosecution.

Section 113(8) of the PSA requires the Director to provide a report of the results of an investigation to the Attorney General. As noted above, the records at issue in this case consist of the investigative brief entitled “Final Investigative Report”, a letter from the Director of the SIU to the Attorney General pursuant to section 113(8) of the PSA and 30 photographs taken by the SIU investigator at the scene of the motor vehicle accident.

I have carefully reviewed the information at issue in this appeal. I find that the Director's letter to the Attorney General was written to satisfy the Director's reporting requirements under section 113(8) of the PSA. The letter reports to the Attorney General on the results of the SIU investigation based upon the Director's review of the Final Investigative Report. Accordingly, in my view, the Final Investigative Report, the Director's letter and the photographs, considered together, comprise a formal statement of the results of the collation and consideration of information. Consequently, I find that the information contained in the records constitutes a "report" for the purposes of part one of the section 14(2)(a) test.

Previous orders of the Commissioner's office have found that investigations undertaken by the SIU under section 113 of the PSA qualify as law enforcement investigations for the purposes of the second part of the section 14(2)(a) test. I adopt this approach from these orders and similarly find that the records were prepared in the course of a law enforcement investigation by the SIU.

In addition, I find that the SIU is an agency which has the function of enforcing and regulating compliance with a law, thereby satisfying the third part of the section 14(2)(a) test. As all three parts of the test described above have been met, I find that the records qualify for exemption under section 14(2)(a) of the Act.

Since I have found that the section 14(2)(a) exemption applies to the records at issue, it is not necessary for me to consider the application of sections 14(1)(l) and 21(1) of the Act to them.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ June 27, 1997