



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

ORDER P-1372

Appeal P_9600451

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 all information relating to the requester held by any office or detachment of the Ontario Provincial Police.

The Ministry responded to the requester and advised him that the existence of the requested information could neither be confirmed nor denied in accordance with section 14(3) of the Act.

The requester (now the appellant) appealed this decision.

This office sent a Notice of Inquiry to the appellant and the Ministry. Only the Ministry provided representations in response to this Notice.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF RECORDS

Section 14(3) of the Act states as follows:

A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.

Sections 14(1) and (2) set out various grounds for exemption.

A requester in a section 14(3) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 14(3), the Ministry is denying the requester the right to know whether a record exists, even if one does not.

For this reason, if the Ministry wishes to rely on section 14(3) of the Act, it must do more than merely indicate that records of the nature requested, if they exist, would qualify for exemption under sections 14(1) or (2). The Ministry must establish that disclosure of the mere existence or non-existence of such records would communicate to the requester information that would fall under either section 14(1) or (2) of the Act (Order P-542).

Accordingly, I will begin by considering whether the disclosure of records responsive to the appellant's request, if they exist, would qualify for exemption under section 14(1) or 14(2). If the answer to this question is yes, I will then consider whether disclosure of the mere existence or non-existence of such records would communicate to the requester information that would fall under either section 14(1) or (2) of the Act.

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

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

interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons.

Having reviewed the Ministry's representations, I am satisfied that the disclosure of the requested records, if they exist, could reasonably be expected to reveal law enforcement intelligence information as contemplated by section 14(1)(g) of the Act. I am also satisfied that such activity would qualify as "law enforcement" as defined in section 2(1) of the Act. Accordingly, I find that records responsive to the appellant's request, if they exist, would qualify for exemption under section 14(1)(g).

I am also satisfied that, should such records exist, disclosure of their existence would communicate information to the appellant which would fall under the exemption in section 14(1)(g).

Accordingly, I find that section 14(3) applies in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ March 26, 1997