



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1457

Appeal P\_9700173

Police Complaints Commissioner



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## **NATURE OF THE APPEAL:**

The appellant made a request to the Police Complaints Commissioner (the PCC) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records held by the PCC which relate to an identified investigation initiated by the appellant and her husband. The appellant's husband provided his consent to disclose his personal information to his wife.

The Ministry of the Attorney General (the Ministry) responded to the request on behalf of the PCC. Partial access to the records was provided to the appellant. Access was denied to thirteen records pursuant to sections 14(2)(a) and 49(a) of the Act. A portion of the request was transferred to the Ministry of the Solicitor General and Correctional Services as they had a greater interest in those records.

The appellant appealed the decision to deny access to the thirteen records and further appealed the decision to transfer a portion of the request and the period of time it took to transfer the request.

During mediation it was agreed that the only issue in this appeal would be the decision to deny access to the records.

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

The 13 records at issue in this appeal consists of six letters, three memoranda, one fax cover sheet, one note to file and two post-it notes.

## **DISCUSSION:**

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT**

"Personal information" is defined in section 2(1) of the Act, in part, as recorded information about an identifiable individual. I have reviewed the information in the records and find that it relates to the appellant and other identifiable individuals.

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 49 sets out exceptions to this general right of access.

Section 49(a) of the Act gives the Ministry the discretion to deny access to records containing a requester's own personal information where certain listed exemptions, including section 14, would otherwise apply.

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.

[See Order 200 and Order P-324]

The PCC submits that each of the records qualifies as a report, as each was “created pursuant to a complaint which led to an investigation.”

The word “**report**” is not defined in the Act. However, in order for a record to be a report, it 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 (Order 200). Quite clearly, not every record created pursuant to a complaint or during an investigation will meet these criteria. Having reviewed the records, I find that, with the exception of Record 22, the records do not, individually or collectively, comprise a report. Record 22 consists of a formal statement or account of the investigation, and I am satisfied that it was prepared in the course of a law enforcement investigation by the PCC, which has the function of enforcing and regulating compliance with a law.

Accordingly, I find that Record 22 is exempt under section 49(a) of the Act, as all of the requirements for section 14(2)(a) have been met. The remaining records do not qualify for exemption and should be disclosed to the appellant.

Before closing, I note that certain records contain the names of the police officers together with the fact that they were the subject of a complaint to the PCC. The information contained in the records, however, relates only to the appellant’s complaint. The records do not contain information provided by any of the subject officers. As, in my view, to prevent disclosure of information which the requester had provided to a government body would be a manifestly absurd result, the exemptions related to privacy protection do not apply in these circumstances.

## **ORDER:**

1. I uphold the PCC’s decision not to disclose Record 22.
2. I order the PCC to disclose the remaining records to the appellant by sending her a copy by **October 20, 1997**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the PCC to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ September 29, 1997