



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1507**

**Appeal P-9700262**

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



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **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 a named individual and an organization he was formerly associated with. The request attached a waiver from the individual authorizing disclosure to the requester.

The Ministry advised the requester that the existence of any responsive records 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. Representations were received from the Ministry only.

## **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 sections 14(1) or (2) of the Act (Orders P-338 and P-542).

Accordingly, I will begin by considering whether disclosure of responsive records, 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 of these sections of the Act.

The Ministry submits that if records exist they would qualify for exemption under sections 14(1)(a), (g) and 14(2)(a). Sections 14(1)(a) and (g) state:

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

- (a) interfere with a law enforcement matter;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

The Ministry submits that disclosure of responsive records, if they exist, would interfere with an ongoing law enforcement matter and would reveal law enforcement intelligence information. The Ministry points out that the Ontario Provincial Police (OPP), which is part of the Ministry, is responsible for a wide range of policing activities in the province, including the prevention of crime and apprehension of offenders. The OPP also monitor and gather information with respect to ongoing investigations and law enforcement intelligence information respecting organizations or persons.

I accept that the OPP is engaged in policing activity, and that this falls within the definition of “law enforcement” under section 2(1) of the Act.

I also accept that disclosure of the contents of records relating to OPP investigations could reasonably be expected to “interfere with a law enforcement matter” or “reveal law enforcement intelligence information respecting organizations or persons” (Order 106). Therefore, I find that records responsive to the appellant’s request, if they exist, would qualify for exemption under sections 14(1)(a) and/or (g).

In any case in which an institution has relied on section 14(3), I look very carefully at the manner in which the head has exercised discretion. In this case, the Ministry has provided me with sufficient information in its representations to satisfy me that, in the circumstances of this case, disclosure of the mere existence or non-existence of responsive records would communicate to the requester information that would fall under sections 14(1)(a) and/or (g).

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

**ORDER:**

I uphold the Ministry’s decision.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ December 23, 1997