



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

ORDER PO-1653

Appeal PA-980234-1

Ministry of Environment and Energy



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NATURE OF THE APPEAL:

The Ministry of Environment and Energy (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a specific document prepared by the Ministry's Operations Division entitled "Operations Division - Delivery Strategy" which was reprinted on April 24, 1998. The Ministry located the requested record and decided to provide access to portions of it. Access to the remaining parts of the record was denied under sections 14(1)(c) (law enforcement) and 14(1)(l) (facilitate commission of an unlawful act) of the Act. In addition, the Ministry initially determined that the payment of a fee of \$202.10 was required.

The requester, now the appellant, appealed the Ministry's decision to deny access to the undisclosed portions of the record and the amount of the fee.

The Ministry then provided the appellant with a revised decision letter indicating that it intended to deny access to the entire record and that, in addition to the exemptions described above, it also claimed the application of section 18(1)(c) of the Act (economic and other interests). The Ministry also indicated that, as access to the record was denied, no fee would be required in the circumstances.

A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties. The record at issue consists of a 37-page document entitled "Operations Division Delivery Strategies" to which are attached a number of Appendices.

THE RECORD

The Ministry has provided me with a detailed explanation of the record and the circumstances surrounding its creation. The Delivery Strategies document which is the subject of this request and appeal was written by and for the Operations Division (OD) of the Ministry in order to focus the efforts of its compliance and enforcement staff to achieve the greatest benefit to the environment possible. The OD has the function of ensuring compliance with environmental legislation, protecting air and water quality, ensuring the proper disposal of waste materials and ensuring the quality of drinking water.

The Delivery Strategies document was prepared in order to provide guidance to OD staff in determining priorities and dealing with workload pressures to ensure that emphasis is placed on issues of environmental and human health significance. The procedures outlined in the document provide a decision-making framework to promote consistency in program delivery across the Province. The record is contained in a binder which includes a forward section, ten program-specific delivery strategies and a summary document.

DISCUSSION:

LAW ENFORCEMENT

The Ministry submits that the record is exempt from disclosure under section 14(1)(c) of the Act. This section states that:

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

reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

The Ministry is of the view that public disclosure of its priority-setting approach as described in the record would reveal investigative techniques and procedures which are currently in use or are about to be used for compliance and enforcement purposes. It argues that the disclosure of this information would have a serious impact on its compliance and enforcement activities, which are law enforcement activities for the purposes of section 14 of the Act.

The OD monitors compliance with the Ministry's statutes, including the Environmental Protection Act, the Pesticides Act and the Ontario Water Resources Act. The Ministry submits that its program delivery staff are Provincial Officers who administer the compliance and enforcement activities of the Ministry and are considered law enforcement officers within the meaning of section 14 of the Act, as was established in Order P-306.

The Ministry further submits that the record "outlines techniques and procedures for our staff in the law enforcement activities which they are empowered to perform". It argues that disclosing these documents would compromise its enforcement activities and make it a less effective organization. It goes on to add that the record applies to the majority of the work performed by OD staff and that the program priorities outlined in the documents will help determine which activities will be treated as a priority item and which will not. These identified priorities will also be used to determine the level of outreach activities which will be undertaken in a particular program area, including inspections planned for particular industries or sectors of the economy.

The Ministry has reviewed in great detail the impact which the disclosure of each portion of the record and its appendices will have on its ability to perform its roles effectively. In particular, those areas in the document which identify and describe program priorities and the extent of Ministry involvement are of particular interest to it. Essentially, the Ministry is concerned that if its priority-setting and enforcement procedures became public knowledge, potential offenders would be able to use this information to their advantage, as they would be aware of how the Ministry views different types of violations.

The appellant, on the other hand, submits that an investigative technique or procedure likely to be used in law enforcement generally will provide detailed practices and procedures with respect to law enforcement. He goes on to argue that, in contrast, the record is part and parcel of the Ministry's priority setting exercise which commenced with its Business Plan, which is a publicly available document. It suggests that the record does not describe any "investigative techniques or procedures" as the term is commonly understood.

Rather, the record outlines a number of programme areas and describes those activities which staff are required to fulfill, as well as work which staff are no longer required to undertake. Accordingly, he submits that a decision by the Ministry not to require staff to undertake work in a certain area does not constitute “investigative techniques or procedures” within the meaning of section 14(1)(c) but is merely a policy decision by the Ministry to limit its activities to certain programme areas.

The appellant concludes by arguing that it would be a misnomer to characterize a document which outlines how the Ministry will be prioritizing staff time as constituting “investigative techniques or procedures”. He indicates that the record does not provide any information on how the Investigations and Enforcement Branch, the Ministry’s law enforcement agency, is to respond to suspected violations nor does it curtail the powers or responsibilities of Provincial Officers to respond to environmental offences.

The appellant also refers to Order P-1487 where Adjudicator Laurel Cropley adopted the language used in Order P-170 in which Inquiry Officer John McCamus held that:

In order to constitute an “investigative technique or procedure” it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that a particular technique or procedure is generally known to the public would normally lead to the conclusion that such a compromise would not be effected by disclosure and, accordingly, that the technique or procedure in question is not within the scope of section 14(1)(c).

The appellant also suggests that much of the information contained in the record has already been made available to the public in a document prepared by the Ontario Public Service Employees Union (OPSEU) in November 1997, as well as other records which have been made public by the Ministry.

I have carefully reviewed the record which is the subject of this request and find that it contains information which may properly be characterized as an “investigative technique or procedure” within the meaning of section 14(1)(c). The record contains detailed methodologies for the investigators and enforcement staff who are intended to make use of it in the course of performing their duties. I find that much of the information outlined in the record was designed to provide Ministry staff with a step-by-step procedure for investigating complaints, initiating investigations, compelling compliance with environmental laws and a host of other activities. The record goes far beyond merely documenting work priorities for the Ministry staff who will rely upon it. It describes in minute detail precisely how work is to be performed by the staff who will make use of the record in the course of their day to day activities.

It is well-established that the Ministry’s investigative and compliance functions with respect to Ontario’s environmental laws qualify as “law enforcement” activities for the purposes of section 14 of the Act (Order P-306). The record describes in detail the manner in which Ministry staff are to approach breaches or potential violations of these pieces of legislation and the prosecution of offenders.

The Ministry has painstakingly reviewed the possible consequences which may flow from the disclosure of each portion of the record. I have found above that much of the record contains references to investigative techniques or procedures which are presently used by the Ministry as part of its environmental law enforcement mandate. In my view, the disclosure of these portions of the record would reveal techniques and procedures, properly characterized as law enforcement in nature, which are not widely known to the public.

In addition, I find that the disclosure of this information would hinder and render less effective the Ministry's efforts to enforce Ontario's environmental laws. The disclosure of this information would enable potential offenders to target geographical locations and specific types of pollution activities where monitoring or enforcement by the Ministry may not be around the clock or Province-wide. This would compromise the effectiveness of the investigative and compliance functions of the Ministry and render more difficult its ability to monitor and prosecute breaches of environmental laws.

For these reasons, I find that the majority of the information contained in the record is exempt from disclosure under section 14(1)(c). Because of the manner in which the exempt information contained in the record is intertwined with that which does not qualify for exemption, severance would be particularly difficult and would not result in the appellant receiving anything other than "unconnected snippets of information". Accordingly, I find that the entire record may properly be considered to qualify for exemption under section 14(1)(c).

Because of the manner in which I have addressed the application of section 14(1)(c) to the record, it is not necessary for me to consider whether it is also exempt under sections 14(1)(l) or 18(1)(c).

PUBLIC INTEREST IN DISCLOSURE

The appellant represents a public interest organization which is well-known and well-respected for its efforts to promote and protect Canada's environment. Part of its activities, particularly over the past several years has been to monitor the effect which budget cuts have had on the ability of the Ministry to effectively ensure environmental protection in Ontario.

The appellant has included in his submissions a copy of the Ministry's Business Plan which places a great deal of emphasis on the Ministry's accountability to the public. The Business Plan provides that its publication will enable Ontarians to review the objectives of government and assess how those objectives are being met. The appellant argues that the record is an important component of the Ministry's overall Business Plan as it provides the more detailed objectives for program areas within the Ministry and outlines how staff will meet those objectives.

The appellant submits that the record provides important information on how the Ministry will ensure environmental protection throughout the Province. It argues that the Ministry should abide by its commitment in its Business Plan to allow the public to review the objectives of government and assess how

those objectives are being met. It suggests that the disclosure of the record will enable the public to do just that.

As a result, the appellant submits that there is a compelling public interest in the disclosure of the record since it provides important information about the activities and objectives of the government. He urges that the disclosure of the information contained in the record would result in a more informed citizenry and enhance the public's ability to express public opinion on environmental issues.

Section 23 of the Act sets out the statutory authority for the so-called "public interest override". It states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

I have found above that the record is exempt under section 14(1)(c), which is not one of the enumerated exemptions which are subject to the override provisions in section 23. Accordingly, section 23 can have no application in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision to deny access to the record.

Original signed by: _____
Donald Hale
Adjudicator

January 19, 1999