



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2332

Appeal PA-030316-1

Ministry of Public Safety and Security



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NATURE OF THE APPEAL:

The appellant made a request to the Ministry of Community Safety and Correctional Services (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the Act) for access to a copy of a security audit of a maximum security detention centre operated by the Ministry.

The record identified as responsive by the Ministry is a document entitled “Institution Operational Self-Audit Workbook” (OSAW). It includes a description of security measures at the facility and an assessment of their effectiveness.

According to the Ministry, the OSAW is primarily designed to enable correctional facilities to compare their institutional procedures, routines and standing orders to Ministry policies and procedures and to determine their compliance with the expected norms and required standards of physical security. The audit identifies security measures in place at the detention centre, including both physical structures and equipment and procedures. It identifies deficiencies in security and includes an action plan component which addresses how identified deficiencies are to be corrected.

The OSAW also includes “sign-off” sheets indicating whether certain officials are satisfied that responses in the audit workbook have been sufficiently verified and action plans developed to correct deficiencies and any areas of non-compliance with security requirements, and other information described below, some of which the Ministry has agreed to disclose to the appellant.

Initially, the Ministry denied the appellant access to the entire document. It relied on the exemptions from the requirement to disclose contained in sections 13(1) (advice to government) and sections 14(1)(c) (reveal investigative techniques); 14(1)(e) (endanger life or physical safety); 14(1)(i), (j) and (k) (security); and 14(1)(l) (facilitate commission of an unlawful act).

The appellant appealed this decision to the Commissioner. Mediation did not resolve any issues.

A Notice of Inquiry was issued, beginning the adjudication stage of this appeal. The Ministry then issued a supplementary decision letter in which it agreed to release certain parts of the record as it had decided they do not raise security concerns. The Ministry released the “Regional Director Sign-offs”, the “Superintendent Sign-Offs”, the title page, parts of the table of contents, parts of the introductory portions of the workbook, a blank “Action Planning Form”, a blank 3-page form entitled “Strategic Facilities Plan 2002-2003 – Business Case”, and parts of nine pages of the work book dealing with topics such as posting of notice signs where closed circuit television cameras are used, disposal of confiscated alcohol, preparation of certain reports, and the supply of clothing and hygiene products to inmates. Therefore, these parts of the record are no longer in issue in this inquiry.

At issue in this inquiry are the remaining pages of the OSAW, which describe the types of security tools, equipment, materials, systems and practices in place in this detention centre, their location, whether they comply with norms and standards, and completed or proposed measures to correct any non-compliance.

The Ministry provided representations in response to the Notice of Inquiry, addressing why the exemptions set out above apply to the information remaining at issue. The appellant was sent a copy of the Ministry's full representations and his response was invited. Representations were received from the appellant in response and shared with the Ministry in full. The Ministry was given an opportunity to comment on issues raised in the appellant's representations, and the Ministry did provide reply representations on those issues.

BRIEF CONCLUSION:

As indicated earlier, the Ministry relies on the following exemptions from the duty to disclose records in its custody or under its control: sections 13(1) (advice to government) and 14(1)(c) (reveal investigative techniques); 14(1)(e) (endanger life or physical safety); 14(1)(i), (j) and (k) (security); and 14(1)(l) (facilitate commission of an unlawful act).

I am satisfied that section 14(1)(k) (jeopardize the security of a detention centre) applies to all the information at issue. Therefore, it is unnecessary to determine which of the other exemptions apply to which parts of the record.

DISCUSSION:

LAW ENFORCEMENT AND RELATED EXEMPTIONS

Issue A: Does the discretionary exemption at section 14(1)(k) apply to the record?

General principles

Section 14(1)(k) states:

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

(k) jeopardize the security of a centre for lawful detention;

Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Goodis* (May 21, 2003), Toronto Doc. 570/02 (Ont. Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

The Ministry made representations that support its claim that disclosure of the remaining portions of the security audit could reasonably be expected to jeopardize the security of the detention centre.

The Ministry stated that the facility in question is a maximum security detention centre where individuals are lawfully detained in custody. Maximum security institutions accommodate individuals who have committed serious offences and/or have a poor behavioural history, including inmates on remand, organized crime figures, and other high-risk inmates. These inmates present a risk to staff, other inmates, and the community. Perimeter security in maximum security institutions is well-defined, highly secure, and controlled. Inmate movement and association within the institution is strictly regulated and directly supervised. Inmates are usually accommodated in cells. Dynamic security measures and construction techniques, materials, hardware and fittings are consistent with the high level of security required to manage the inmate population safety. On an average day, the facility in question accommodates over 300 inmates.

The Ministry also stated that:

The OSAW contains detailed information on all aspects of operational security and procedures required in the day to day operation of a maximum security correctional facility. From physical security (such as the condition of doors, locks, windows, walls, etc.), to procedures for protecting the safety of staff, visitors and inmates.

In my view, much of the information in the security audit would be obvious to most people. It is a matter of common sense and common knowledge that certain kinds of security measures, such as locks, fences and cameras would be present in certain locations and would be checked periodically in certain ways and that other practices and procedures described in the OSAW would be routine. However, the Ministry points out that “to a knowledgeable individual, the absence of a particular topic, identified deficiencies, or the unavailability of certain security-enhancing measures at a given correctional facility could suggest a potential security vulnerability”.

I accept that even information that appears innocuous could reasonably be expected to be subject to use by some people in a manner that would jeopardize security. Knowledge of the matters dealt with in the security audit could permit a person to draw accurate inferences about the possible absence of other security precautions. Such inferences could reasonably be expected to jeopardize the security of the institution by aiding in the planning or execution of an escape attempt, a hostage-taking incident, or a disturbance within the detention centre. As the Ministry states, disclosure of the contents of the security audit to a requester can result in its dissemination to other members of the public as well.

EXERCISE OF DISCRETION

Issue B: Did the institution exercise its discretion under section 14? If so, should this office uphold the exercise of discretion?

General principles

The section 14(1)(k) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

Relevant considerations

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information

- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

There is no evidence that in exercising its discretion the Ministry took into account any irrelevant considerations or failed to take into account any relevant ones. The Ministry weighed the possible harm that could arise from disclosing the information against potential benefits to the public or the appellant from releasing the information. In its representations, the Ministry states:

The Ministry is not aware of any sympathetic or compelling need on the part of the appellant to receive the non-disclosed parts of the OSAW. As noted previously, the Superintendent of the EMDC was agreeable to having a dialogue with the appellant in regard to his information needs. However, the Ministry understands that the appellant did not wish to pursue this opportunity.

The Ministry's statement that such an opportunity was provided is not disputed.

Moreover, although the appellant alleges that failure to release the information in the OSAW puts the health and safety of staff and inmates at risk, he provides limited evidence of this. The evidence that he did provide shows that there is at least one alternative mechanism in place for addressing health and safety concerns. There is an occupational health and safety committee at the detention centre and its minutes show that it identifies and addresses health and safety concerns affecting staff and inmates of the type that are covered in security audits such as the one in question.

The Ministry also considered whether release of the security audit would enhance public confidence in the operation of the detention centre. It concluded that the possibility of harm from disclosure outweighs any possible benefit in this regard. Given the possibility that disclosure of this kind of information might reduce rather than increase public confidence, I cannot fault the Ministry's treatment of this consideration.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
John Swaigen
Adjudicator

_____ October 18, 2004