



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

ORDER 102

Appeal 880325

Ministry of the Solicitor General



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October 10, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 102
Appeal Number 880325
Ministry of the Solicitor General

This letter constitutes my Order in your appeal of the decision by the Ministry of the Solicitor General (the "institution"), to refuse to confirm or deny the existence of a record requested under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

On June 6, 1988, a part of a request for access to personal information was transferred to the institution from the Ministry of the Attorney General. You requested access to materials with respect to the following:

interview with detective Sgt. Gary A.R. Langner and Detective Sgt. Terry Shand and Dave Robbins they were from langner crime unit- Ontario Provincial Police Downsview district head-Quarters, at highway 401 & keele st. downsview ont this was on February 19th 1985 also concerning the [named individual] case.(sic)

On June 20, 1988 the institution received a copy of your request for personal information which you had submitted to the Ministry of the Attorney General. In the request you sought access to the following information:

I would like a copy of the files associated with this application, particularly any information related to my case in regards to the investigation by Sgt. J. Boothby and Sgt. Tony Warr of Homicide sward Metropolitan

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toronto police with regards to interview on January 11, 1985 in Kingston on [a named individual]...

Also I had interviews with Detective Sgt. Gary A. R. Langner and Detective Sgt. Terry Shand on February 19th, 1985 from the Provincial Police Downsview District Headquarters on [a named individual]. Also I forwarded register letter dated Jan. 19, 1987 to the Hon. Ian G. Scott MPP Ontario Attorney General on the murder of [a named individual]. Two detectives interviewed me from Toronto on December 9, 1987...I also wrote William G. Davis Q.C. Premier of the Province of Ontario on March 26th 1983...I had also wrote a letter dated May 4th, 1983 to Dave Peterson MPP Liberal leader of Ontario liberal party...I also had interview with Harry Hickling and Sgt. Peter Martin of the Kingston police on August 18, 1983 on this matter of [a named individual]. I wish to obtain copies of ALL information held in the privacy banks on me with regard to the whole [named individual] case. (sic)

On September 2, 1988, the institution's Freedom of Information and Privacy Co-ordinator responded to both requests in one letter which stated that:

Partial access is granted to information concerning investigative case records on the murder of [a named individual] with regard to you.

Access is denied to other information contained in these records under subsections 14(1) (a), 14(1) (b), 14(2) (a), 15(b), 19, 21(1) (f), 21(3) (b) and 49 of the Act.

On September 26, 1988, you wrote to me appealing the institution's decision. After several attempts by my office to clarify your appeal, I gave notice of your appeal on November 7, 1988. You confirmed that the basis for your appeal is the denial of access to:

the material that was interviewed with Detective Sgt. Gary A.R. Langner, Detective Sgt. Terry Shand and Detective Sgt. Dave Robbins from the Crime Unit Ontario Provincial Police Downsview District Headquarters that was on February 19, 1985 concerning [a named individual] case. (sic)

As you know, as soon as your appeal was received in my office, an Appeals Officer was assigned to investigate the circumstances of the appeal, and attempt to mediate a settlement.

In discussions with the institution's Freedom of Information staff, subsections 49(a) and 14(3) of the Act were cited as applicable.

Subsection 14(3) had not been cited in the institution's original written response to you. Pursuant to my request, the institution notified you by letter dated July 13, 1989 stating:

Further to my letter to you dated September 2, 1988 in which I denied access to some information pursuant to section 49(a) of the Act, I am providing the following for clarification. Pursuant to section 49(a) and subsection 14(3) of the Act I am refusing to confirm or deny the existence of any records concerning your interview on December 19, 1985 with Detective Sergeant G.A.R. Langner, Detective Sergeant D. Robins and Constable T. Shand, regarding the [named individual] murder case.

As settlement was not effected, an Appeals Officer's Report was prepared and sent to you and the institution on July 27, 1989, together with a Notice of Inquiry. Both parties were asked to make representations to me concerning the subject matter of the appeal.

I have received and considered representations from both parties in making my decision.

The purposes of the Act as set out in section 1 should be noted at the outset. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter-balancing privacy protection purpose of the Act. This subsection provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide individuals with a right of access to their own personal information.

Further, section 53 of the Act provides that where a head refuses access to a record, the burden of proof that the record falls within one of the specified exemptions in this Act lies upon the head.

The provisions of the Act relied upon by the head have been included here for ease of reference.

Subsection 49(a) of the Act states:

A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information; (emphasis added)

Subsection 14(3) of the Act provides that:

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

Subsections 14(1) and 14(2) read as follows:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

- (j) facilitate the escape from custody of a person who is under lawful detention;
 - (k) jeopardize the security of a centre for lawful detention; or
 - (l) facilitate the commission of an unlawful act or hamper the control of crime.
- (2) A head may refuse to disclose a record,
- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
 - (b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;
 - (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
 - (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

In this appeal, I must determine whether disclosure of the requested record, if such a record existed, could be refused under subsection 14(1) or 14(2). Following that, I must decide whether the head has properly exercised his discretion under subsection 14(3) to refuse to confirm or deny the existence of the requested record.

While considering your appeal, I was mindful of one of the purposes of the Act which states that, "necessary exemptions from the right of access should be limited and specific." After careful consideration of the institution's representations, I am satisfied that if the requested record existed, its disclosure could be refused under subsection 14(1) or 14(2). In this case, I find nothing improper in the way the head has exercised his discretion to refuse to confirm or deny the existence of the requested record under subsection 14(3) of the Act and would not alter it on appeal.

Accordingly, I uphold the decision of the head.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Steven Offer,
Solicitor General for the Province of Ontario
Ms Isabel MacTavish, FOI Co-ordinator