

CITATION: Ontario (Ministry of Community Safety and Correction Services) v. Ontario
(Information and Privacy Commissioner), 2011 ONSC 3525
DIVISIONAL COURT FILE NO.: 422/09
DATE: 20110607

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
ASTON, LOW and HOURIGAN JJ.

B E T W E E N:)
)
MINISTRY OF COMMUNITY SAFETY) *Sara Blake, for the Applicant*
AND CORRECTIONAL SERVICES)
)
Applicant)
)
- and -)
)
INFORMATION AND PRIVACY) *David Goodis, for the Respondent,*
COMMISSIONER, and JOHN DOE,) *Information and Privacy Commissioner*
Requester)
)
Respondents)
)
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)
) **HEARD at Toronto: June 7, 2011**

ASTON J. (Orally)

[1] The Ministry of Community Safety and Correctional Services brings this application for judicial review of an August 7, 2009 order made by the Information and Privacy Commissioner. The Commissioner ordered the Ministry to publicly disclose information contained in the Sex Offender Registry, specifically the first three digits of postal codes known as Forward Sortation Areas and the number of sexual offenders in each Forward Sortation area.

[2] The Ministry submits that the Commissioner erred in its interpretation of the law enforcement exemptions in s. 14(1)(e) and 14(1)(l) of the *Freedom of Information and Protection of Privacy Act*.

[3] The Ministry acknowledges that both this Court and the Ontario Court of Appeal have determined that the standard of review with respect to the IPC's interpretation and application of s. 14 of the *Freedom of Information and Protection of Privacy Act* is reasonableness. However, the Commissioner was required to apply the correct test and standard of proof.

[4] The Commissioner described the evidentiary burden that the Ministry was required to meet under s. 14(1)(e) as that established by the Court of Appeal in *Ontario (Ministry of Labour) v. Big Canoe*, [1999] O.J. No. 4560 at para. 25:

The Ministry must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institute must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.

[5] The Commissioner found that the Ministry's submissions under s. 14(1)(e) were based on the assumption that offenders could reasonably be identified from the information at issue. The Commissioner had already determined that it was not reasonable to expect that any individual could be identified from the requested information. Consequently, he concluded that the Ministry had failed to provide a reasonable basis for believing that endangerment would result from disclosure.

[6] Turning to s. 14(1)(l), the Commissioner described the evidentiary burden that the Ministry was required to meet as follows:

The Ministry must provide detailed and convincing evidence to establish a reasonable expectation of harm. Evidence amounting to speculation of possible harm is not sufficient.

[7] Once again, the Commissioner found that the Ministry's arguments under s. 14(1)(l) were based on the erroneous assumption that offenders could reasonably be identified from the information at issue. The Commissioner explained why he was not persuaded that disclosure of the requested information could reasonably be expected to cause offenders to decide not to comply with the reporting requirements of *Christopher's Law*.

[8] We are satisfied that the Commissioner applied the correct legal test and did not misapprehend the evidence or ignore material evidence. It was open to the Commissioner to conclude that the Ministry had not met the evidentiary onus and that the facts, opinion and speculation relied on by the Ministry were not persuasive.

[9] We are not persuaded in turn that the Commissioner's decision was unreasonable. The application is therefore dismissed.

[10] I have endorsed the Record, "The application is dismissed for oral reasons given. No costs requested."

ASTON J.
LOW J.
HOURIGAN J.

Date of Reasons for Judgment: June 7, 2011

Date of Release: June 14, 2011

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B E T W E E N:

**MINISTRY OF COMMUNITY SAFETY AND
CORRECTIONAL SERVICES**

Applicant

- and -

**INFORMATION AND PRIVACY COMMISSIONER,
and JOHN DOE, Requester**

ORAL REASONS FOR JUDGMENT

ASTON J.

Date of Reasons for Judgment: June 7, 2011
Date of Release: June 14, 2011