

ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

LANE, JENNINGS AND SWINTON JJ.

**B E T W E E N:** )  
 )  
BILL SCHILLER ) *Tony S.K. Wong*, for the Applicant  
 )  
Applicant )  
 )  
- and - )  
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 )  
TOM MITCHINSON, Assistant Commissioner, ) *David Goodis*, for the Respondent Tom  
and MINISTRY OF THE SOLICITOR ) Mitchinson  
GENERAL )  
 )  
Respondents ) *Robert Ratcliffe*, for the Respondent,  
 ) Ministry of the Solicitor General  
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 ) **HEARD at Toronto:** June 3, 2005

**SWINTON J.:** (Orally)

[1] In an application for judicial review of a decision of the Assistant Commissioner, under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, the standard of review is reasonableness. In this case, in Reconsideration Order P.O.2179-R, the Assistant Commissioner upheld the decision of the Ministry of the Solicitor General to refuse to disclose records that included expense forms and notebooks of members of an Ontario Provincial Police security detail who accompanied former Premier Harris on trips to the United States in the period from January, 2000 to January, 2001. The date of the request was January 25, 2001.

[2] The Assistant Commissioner ordered the Ministry to disclose a one-page summary report of the expenses of the security detail, which discloses the number of trips, destination states and total expenses paid for each trip.

[3] Section 14(1)(e) of the *Act* reads:

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

- (e) endanger the life or physical safety of a law enforcement officer or any other person.

[4] With respect to the expense statements, the Assistant Commissioner found at p. 30 of the Application Record:

Further, based on the evidence and representations provided by the Ministry, including the specific incidents identified in the affidavit submitted by the officer in charge of the OPP's Investigations Support Bureau, I find that disclosing the size of the security detail could reasonably be expected to endanger the life or physical safety of the Premier and the officers assigned to his security detail. The evidence provided by the Ministry is both detailed and convincing. Applying the standard established by the Court of Appeal in *Ontario (Ministry of Labour) [Ontario Information and Privacy Commissioner Inquiry Officer v. The Ontario Minister of Labour Office of the Worker Advisor]* (1999), 46 O.R. (3d) 395 (C.A.), I find that the reasons for applying the s. 14(1)(e) exemption claim to records that would reveal the size of the Premier's security detail, cannot accurately be described as a frivolous or exaggerated expectation of endangerment to safety. On the contrary, the Ministry has persuaded me that there is a reasonable basis for believing that the Premier's safety could be endangered by disclosing records that would reveal the size of his security detail, as well as the safety of the officers themselves. My conclusion in this regard certainly does not imply that the appellant himself would be the source of any such harm. However, as has been established in many past orders, disclosure of records to a particular requester is tantamount to disclosing the information contained in the records to the public generally, and this is the basis for my finding that the s. 14(1)(e) exemption applies to the various expense claim forms and the itemized breakdown.

[5] While Mr. Harris was no longer Premier at the time of the reconsideration decision under review, the Assistant Commissioner held that the exemption still applied, for the following reasons found at p. 31 of the record:

In my view, it is reasonable to assume that security arrangements for Premiers remain relatively consistent irrespective of incumbent office holder, and that disclosing the size of the security detail used by former Premier Harris during the time period covered by the appellant's request could reveal reasonably accurate information concerning security arrangements for the current Premier. It is also reasonable, in my view, to assume that security arrangements could differ based on location and circumstance, and that disclosing information that would reveal different sized security details for different locations could create a risk to the safety of the officers and the official they are accompanying to these locations in future. Consistent with the direction of the Divisional Court in *Ontario (Attorney General) v. Fineberg* [(1994), 19 O.R. (3d) 197], in my view, a reasonable degree of deference should be

accorded to the Ministry as it relates to the assessment of the potential danger in revealing the size of the security detail that accompanied former Premier Harris, in light of its potential impact on current and future security arrangements for Premier Eves and his successors.

[6] The Assistant Commissioner dealt with other records on p. 32:

As far as the responsive portions of Records 1-23 in this appeal are concerned, each of them was prepared by an individual identifiable OPP officer and, in my view, all of these records should be treated in the same manner as the Statement of Expense forms at issue in Order PO-1944. I do not accept the Ministry's position that disclosing Records 1-23 would reveal a pattern of activity on the part of the OPP security detail or the former Premier sufficient to bring the records within the scope of section 14(1)(e); however, I do find that disclosing them would necessarily reveal the number of OPP officers assigned to provide security to the former Premier on a particular trip, and that this is sufficient to bring these records within the scope of section 14(1)(e) of the *Act*.

Turning to Records 24-118, I find that the responsive portions of these records qualify for exemption under section 14(1)(e) for the same reasons as Records 1-23. In addition, because of the detailed nature of the police officers' notebook entries, and the fact that they reveal all activities undertaken by the various officers on the days in question, I accept the Ministry's position that disclosing these records would reveal a pattern of activity on the part of the security detail, which reinforces my finding that these records meet the requirements of the section 14(1)(e) exemption.

[The Court did not assign paragraph number 7.]

[8] In applying the reasonableness standard, the reviewing Court should consider whether the decision was reached without an evidentiary foundation or whether there is an error in the logical process used to reach the decision (*Canada (Director of Investigation and Research) v. Southam Inc.* (1997), 144 D.L.R. (4th) 1 at paragraph 56).

[9] The Assistant Commissioner applied the correct test under s. 14(1)(e) of the *Act*, asking whether there was detailed and convincing evidence to show that there was a reasonable basis for believing that the Premier's safety and that of his security officers could be endangered by revealing the size of his security detail on these trips. He made a finding of fact that there was a reasonable basis to believe there was a risk of harm to the safety of Premier Harris and his security officers if the records were disclosed. There was evidence in the record to support that conclusion, particularly the Ryder affidavit.

[10] The Assistant Commissioner also made a finding that there was a reasonable basis to conclude that the disclosure of security arrangements for Premier Harris could reveal reasonably accurate information about security arrangements for the current Premier, and thus create a risk to the safety of the current Premier and his security officers. In our view, it was reasonable for the

Assistant Commissioner to conclude that the risk from disclosure of the records was a risk to the person holding the office of the Premier, and not simply to the individual who held office at the time of the request.

[11] Given the Assistant Commissioner's decision that the statements of expense were exempt from disclosure pursuant to the exemption in s. 14(1)(e), it was not unreasonable for him to conclude that it was unnecessary for the Ministry to search for the receipts that were attached to the original statements of expense.

[12] As the Assistant Commissioner acted reasonably in reaching his decision that the s. 14(1)(e) exemption applied, the application for judicial review is dismissed.

**LANE J.:**

[13] The application record is endorsed: "The application is dismissed for reasons given in Court by Swinton J. Costs to the respondent Ministry fixed at \$3,500.00."

LANE J.  
JENNINGS J.  
SWINTON J.

**Date of Reasons for Judgment: April 7, 2005**  
**Date of Release: April 18, 2005**

**COURT FILE NO.:** 634/03

**DATE:** April 7, 2005

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**LANE, JENNINGS AND SWINTON JJ.**

**B E T W E E N:**

BILL SCHILLER

Applicant

- and -

TOM MITCHINSON, Assistant Commissioner, and  
MINISTRY OF THE SOLICITOR GENERAL

Respondents

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**ORAL REASONS FOR JUDGMENT**

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**SWINTON J.**

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