



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

ORDER M-12

Appeal M-910143

Municipality of Metropolitan Toronto



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O R D E R

BACKGROUND:

A request under the Municipal Freedom of Information and Protection of Privacy Act (the "Act") was received by the Municipality of Metropolitan Toronto (the "institution") for access to a copy of a 1978 report by the Metropolitan Toronto Police Department of an investigation of the Metropolitan Licensing Commission. The requester specified that he was seeking access to an "unedited" version of the report "with a special reference to any item therein related in any way to myself". Portions of the report were released to the public in 1978, prior to the date the Act came into effect.

The institution denied access to portions of the record pursuant to sections 8(2)(c) and 14(1)(f) of the Act. The requester appealed the institution's decision.

During the course of mediation of the appeal, the institution informed the appellant that section 8(2)(a) of the Act was also being applied to the severed portions of the record because the record was the result of an investigation conducted by the Metropolitan Toronto Police Force.

Mediation of the appeal was unsuccessful, and the matter proceeded to inquiry. Notice of the inquiry was sent to the institution and the appellant, accompanied by an Appeals Officer's Report which is intended to assist the parties in making their representations to the Commissioner.

ISSUES:

The portions of the record which have not been disclosed to the appellant do not contain his personal information, therefore the issues arising in this appeal are:

- A. Whether the information contained in the severed portions of the record qualifies for exemption under section 8(2)(a) of the Act.
- B. Whether the information contained in the severed portions of the
[IPC Order M-12/April 30, 1992]

record qualifies for exemption under section 8(2)(c) of the Act.

C. Whether the mandatory exemption under section 14 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the severed portions of the record qualifies for exemption under section 8(2)(a) of the Act.

Section 8(2)(a) of the Act reads:

A head may refuse to disclose a record,
 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;

A number of orders have been issued under the provincial Freedom of Information and Protection of Privacy Act which involved section 14(2)(a) of that Act, which section is identical to section 8(2)(a) of the municipal Act. In those orders, a three part test was established to determine whether a record fits within the exemption. This test is as follows:

In my view, in order to qualify for exemption under subsection 14(2)(a) of the Act, a record must satisfy each part of the following three part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Order 200]

[IPC Order M-12/April 30, 1992]

In Order 200, the meaning of the word "report" was also considered:

The word "report" is not defined in the Act. However, it is my view that in order to satisfy the first part of the test i.e. to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

I have considered the record in issue in this appeal and have concluded that it clearly meets all three parts of the test. The record was prepared by the Metropolitan Toronto Police Force and is entitled "Investigation of Metropolitan Licensing Commission". In the "Forward" of the record it is clearly stated that the investigation was conducted by members of the Metropolitan Toronto Police Fraud Squad as a result of certain allegations regarding possible criminal activity. The record is signed by the four police officers who conducted the investigation.

I am satisfied that the record is a report prepared in the course of a law enforcement by an agency which has the function of enforcing and regulating compliance with a law.

Section 8 of the Act is a discretionary exemption, providing a head with the discretion to disclose a record even if the record meets the test for an exemption. The decision was made in this case to grant partial access to the record.

The appellant indicated that he wanted an unsevered copy of the record because he felt that the public release of portions of the record in 1978 has had an adverse effect on him. The appellant is an individual who was connected with the Metropolitan Licensing Commission during the time of the investigation which resulted in the record. It is the appellant's position that the partial release of the record, which included a release of the recommendations and the summary of the investigation, has resulted in a distortion of the facts, and as a

result an "innuendo" of suspicion has been put on him. The appellant believes that the remainder of the record should be disclosed to ensure that the whole matter will be made clear, and that he will no longer be adversely affected by the partial release of the record.

I have reviewed the circumstances under which the institution decided not to disclose portions of the record and I find nothing improper in the way in which the head has exercised his discretion.

Having upheld the institution's decision to deny access to the record pursuant to section 8(2) (a) of the Act, it is not necessary for me to address the other issues raised in this appeal.

ORDER:

I uphold the head's decision.

Original signed by: _____
Tom Wright
Commissioner

_____ April 30, 1992