



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-245

Appeal M-9300298

Metropolitan Toronto Police Services Board



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ORDER

BACKGROUND:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

- (1) any information (including documents, evidence and statements) related to specific charges made against the requester;
- (2) any information including documents and reports filed under his name and date of birth; and
- (3) information related to an investigation by the Public Complaints Investigation Bureau of a specific complaint made by the requester.

The Police granted partial access to the records. Access was denied to the remaining records on the basis of sections 8(2)(a), 14 and 38(b) of the Act. The requester appealed the denial of access.

During mediation, it was made clear that some of the records at issue in this appeal were duplicates of records obtained by the appellant under a separate request to another Ministry. The appellant agreed to remove those records from this appeal. The Police reconsidered its decision with respect to one of the remaining records and disclosed it to the appellant.

Further mediation was not successful and notice that an inquiry was being conducted to review the decision of the Police was sent to the Police and the appellant. Representations were received from both parties.

The records which remain at issue in this appeal are:

- (1) pages 9, 10, 11 and 12 consisting of three pages of internal correspondence dated November 9, 1992 with a covering memorandum dated November 16, 1992, withheld under section 8(2)(a) and 38(a) of the Act; and
- (2) pages 32, 33, 40 and 41 being witness statements and page 111 being a note to file, withheld under section 38(b).

ISSUES:

The issues in this appeal are:

- A. Whether the records contain "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.
- C. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the records contain "personal information" as defined in section 2(1) of the Act.

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual ...".

Having reviewed the records, I am satisfied that they all contain information which qualifies as "personal information" and, in my view, the information relates to the appellant and other identifiable individuals.

ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.

The Police submit that pages 9, 10, 11 and 12 qualify for exemption under section 8(2)(a) of the Act, which 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;

In order to qualify for exemption under section 8(2)(a), the Police must show that each part of the following three-part test is met in respect of the record:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement,

[IPC Order M-245/January 13,1994]

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]

In Order 200, Commissioner Tom Wright determined that in order to be characterized as a report, a record must consist of a formal statement or account of the results of the collation and consideration of information and that, generally speaking, results would not include mere observations or recordings of fact.

The Police submit that pages 9, 10, 11 and 12 were created by the Public Complaints Investigation Bureau in the course of the investigation of the complaint lodged by the appellant. The investigation of these allegations was related to the enforcement of the Police Services Act, and the record was created by a member of the Police. I am satisfied that these pages qualify as a report prepared in the course of law enforcement by an agency which has the function of enforcing and regulating compliance with a law, such that all parts of the section 8(2)(a) test have been met.

As I have found under Issue A that all of these records contain the personal information of the appellant, I must now consider the application of section 38(a) of the Act, which states:

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

if section 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

This is a discretionary exemption which gives the head discretion to deny access to an individual's own personal information in instances in which one of the enumerated exemptions would apply. I have reviewed the representations of the Police regarding its exercise of discretion to deny access to the records. I find nothing to indicate that the exercise of discretion was improper and I would not alter it on appeal.

ISSUE C: If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.

Under Issue A, I found that the records contain the personal information of the appellant and other identifiable individuals. Section 36(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 38 of the Act provides a number of exemptions to this general right of

access. One such exemption is found in section 38(b) of the Act, which reads:

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

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 38(b) introduces a balancing principle. The Police must look at the information and weigh the requester's right of access to his or her personal information against the rights of other individuals to the protection of their personal privacy. If the Police determine that the disclosure of the information would constitute an unjustified invasion of the personal privacy of other individuals, then section 38(b) gives the Police the discretion to deny the requester access to the personal information.

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 38(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy.

Section 14(3) of the Act lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The Police submit that section 14(3)(b) of the Act applies to pages 32, 33, 40, 41 and 111. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

In my view, all of the above-noted pages were compiled as a part of an investigation into a possible violation of law, namely the Police Services Act, and I find that disclosure would constitute an unjustified invasion of personal privacy under section 14(3)(b).

I have considered section 14(4) of the Act and find that none of the personal information at issue in this

appeal falls within the ambit of this provision. Accordingly, I find that pages 32, 33, 40, 41 and 111 qualify for exemption under section 38(b) of the Act.

Section 38(b) is a discretionary exemption. I have reviewed the representations of the Police regarding its exercise of discretion to deny access to the records. I find nothing to indicate that the exercise of discretion was improper and I would not alter it on appeal.

ORDER:

I uphold the decision of the Police.

Original signed by:
Holly Big Canoe
Inquiry Officer

January 13, 1994