



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

# **ORDER M-128**

**Appeal M-9200161**

**Metropolitan Toronto Board of Commissioners of Police**



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# ORDER

## BACKGROUND:

The Metropolitan Toronto Board of Commissioners of Police (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all of the requester's personal information "filed at #14 Division". The request contained references to certain incidents and names of individuals and the Police contacted the appellant to obtain clarification of his request. The Police indicate that the requester advised them that he was seeking information concerning his September 1991 arrest for possession of marijuana. The Police located certain records at 14 Division, and granted the requester access to some of the records, and denied access to others, either in whole or in part, pursuant to sections 38(a), 38(b), 8(1)(d) and (e), 8(2)(a), 9(1)(d), 12 and 14 of the Act.

The requester appealed the decision of the Police on the basis that he received only partial access. In his letter of appeal, the appellant also indicated that he had received "only very recent records", and that he wanted all of his personal information dating back to 1974 in the custody or under the control of the Police.

The appellant attached to his letter of appeal, a copy of this expanded request which appears to have been sent to the Police. The Appeals Officer advised the appellant that this appeal relates only to his original request for records at 14 Division regarding his arrest in September 1991.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the decision was sent to the Police, the appellant and an affected person. Written representations were received from the Police and the affected person only. In its representations, the Police indicate that they no longer claim section 12 as an applicable exemption for any parts of the record.

## PRELIMINARY MATTERS:

The record at issue consists of 51 pages. Twenty-five pages were disclosed to the appellant in their entirety, 11 pages were withheld in whole. The remaining pages were disclosed to the appellant with severances. Certain parts of the record that were not disclosed to the appellant were withheld on the basis that they are not responsive to the request. I have reviewed the record, and in my view, all of the severances on pages 2, 22, 46, 47 and 51 and page 43 in its entirety are not responsive to the request. The information contained in these pages or parts of pages relate to the vacation dates of police officers, their business telephone numbers and/or notes in police officers notebooks relating to other investigations. Therefore, these parts of the record are outside the scope of the appeal and will not be considered further in this order.

The Police indicate that pages 5 to 12 (inclusive), are not responsive to the request. I do not agree. I have reviewed these pages, and find that they are responsive to the request. Pages 5, 6 and 7 are titled "Court Notification & Statement Request", contain the appellant's name, the charges against him, the date of the occurrence and the date of his arrest. Pages 8 to 12 consist of the appellant's medical record sent to the Police by the hospital where the appellant was a patient, at the request of the appellant. The Police state that this document was sent to them without their request, and contains sensitive information about another individual. The Police have not claimed any exemptions for pages 5-12. I have reviewed these pages, and it is my view that they do not trigger any of the mandatory exemptions in the Act, and they should be disclosed to the appellant.

Therefore, the parts of the record which remain at issue in this appeal are the severances on pages 15, 16, 23, 31, 34, 36, 37, 39, 40, and 50, and pages 17 and 44 in their entirety.

### **ISSUES:**

- A. Whether the record contains "personal information" as defined by section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the exemptions provided by sections 38(a) and 9 of the Act apply to any parts of the record.
- C. If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies to any parts of the record.
- D. Whether the discretionary exemptions provided by sections 8(1)(d) and (e), or 8(2)(a) of the Act apply to any parts of the record.

### **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the record contains "personal information" as defined by section 2(1) of the Act.**

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- ...
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

I have reviewed the record at issue and, in my view, the severances on pages 15, 16, 31, 34, 36 and 37 and the severance on the second line of the first paragraph on page 39, do not contain any information that falls under the definition of personal information in section 2(1) of the Act. The information in these pages was provided by individuals in their professional capacity or in the execution of their employment responsibilities and, therefore, does not qualify as recorded information **about** the individuals. The Police have not claimed any other exemption for these parts of the record, and in the absence of any applicable mandatory exemptions, the severances on these pages should be disclosed to the appellant.

Pages 17 and 44 contain personal information which relates solely to the appellant, while the severances on pages 23, 40, and 50, and the remaining severances on page 39 consist of personal information which relates to individuals other than the appellant.

**ISSUE B: If the answer to Issue A is yes, whether the exemptions provided by sections 38(a) and 9 of the Act apply to any parts of the record.**

In my discussion of Issue A, I found that pages 17 and 44 contain the personal information of the appellant. 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 institutions covered under the Act. However, this right of access is not absolute. Section 38 provides a number of exceptions to this general right of access, including section 38(a) of the Act, which reads as follows:

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 or 15 would apply to the disclosure of that personal information; [emphasis added]

I will now consider whether the provisions of section 38(a) apply to pages 17 and 44 of the record, by virtue of the application of section 9.

The Police claim that section 9(1)(d) applies to pages 17 and 44 of the record. Section 9(1) states:

A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c); or
- (e) an international organization of states or a body of such organization.

In my view, in order to deny access to a record under section 9(1), the Police must demonstrate that disclosure of the record could reasonably be expected to reveal information which the Police received from one of the governments, agencies or organizations listed in the section, **and** that this information was received by the Police in confidence.

Pages 17 and 44 of the record are computer printouts, containing the criminal history of the appellant. The Police state that this information was received from the Royal Canadian Mounted Police (the R.C.M.P.), a law enforcement agency of the Government of Canada.

In their representations, the Police state that the information on pages 17 and 44 was electronically retrieved by them from the Canadian Police Information Centre (C.P.I.C.), a computerized information system with databases to which law enforcement agencies supply and from which they can obtain a wide range of information relating to law enforcement. The Police state that information that is "contributed to, stored in, and retrieved from C.P.I.C. is supplied in confidence by the originating agency for the purpose of assisting in the detection, prevention or suppression of crime and the enforcement of law."

In their representations, the Police state that C.P.I.C is financed, administered and operated by the R.C.M.P. However, the Police also state as follows:

The C.P.I.C Advisory Committee is the policy making authority for the system. It is responsible for establishing the scope and content of the data files, how the system is used and regulated, and which agencies are eligible to use the system. The Advisory Committee, which is comprised of 26 senior police officers from municipal and provincial police forces, the Ontario Police Commission and the R.C.M.P, sets the rules of membership to the C.P.I.C organization.

The representations of the Police indicate that the "Advisory Committee" regulates the disclosure of the information in C.P.I.C and is responsible for investigating and placing of sanctions on agencies which release C.P.I.C. information in contravention of the policy established by it. Presumably, the policies, rules and procedures established by the "Advisory Committee" apply to the R.C.M.P in the same manner as they apply to other members of C.P.I.C.

It is clear from the representations of the Police that the information in C.P.I.C is comprised of information originally entered in the system by various law enforcement agencies, including non-federal sources. The R.C.M.P., while responsible for the administration and maintenance of the system, is only one of the contributors of information. In my view, the mere fact that the R.C.M.P administers and maintains C.P.I.C does not make the R.C.M.P. the source of all information that resides in the system. Only the retrieval of information originally supplied to C.P.I.C by the R.C.M.P can be considered to be "received" from the R.C.M.P.

The R.C.M.P. was invited to make representations on the applicability of the exemption to the record. It declined to do so, stating "we have provided advice to the Metropolitan Toronto Police in this regard".

While the representations of the Police have described in great detail the C.P.I.C. system and the confidentiality of information contained in it, they have not provided me with any evidence that the information at issue in this appeal was supplied to C.P.I.C by the R.C.M.P. Based on my examination of the record, it appears that the information was in fact originally supplied to C.P.I.C by the Police themselves. Based on the evidence before me, I am not able to conclude that the information on pages 17 and 44 of the record was received by the Police from the R.C.M.P. Accordingly, I find that the records

do not qualify for exemption under sections 38(a) and 9(1)(d) of the Act.

**ISSUE C: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies to any parts of the record.**

Under Issue A, I found that the severances on pages 23, 40, and 50, and the remaining severances on page 39 contain the personal information of individuals other than the appellant.

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in certain circumstances listed under the section.

In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

In the circumstances of this appeal, the only representations I have been provided with weigh in favour of finding that the section 14(1)(f) exception does not apply. The appellant has submitted no representations, and in the absence of evidence or argument to the contrary, I find that the mandatory exemption provided by section 14(1) applies.

Because of the manner in which I have disposed of Issues A, B and C, it is not necessary for me to deal with Issue D.

**ORDER:**

1. I order the Police to disclose to the appellant pages 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 31, 34, 36, 37 and 44 in their entirety; and the severance on the second line of the first paragraph on page

39, within 15 days of the date of this order.

2. I uphold the decision of the Police not to disclose the severances on pages 23, 40, 50 and the remaining severance on page 39.
3. In order to verify compliance with the provisions of this order, I order the Police to provide me with a copy of the pages of the record which are disclosed to the appellant pursuant to Provision 1, **only** upon my request.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_ May 6, 1993