



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-146

Appeal M-9200399

Township of Michipicoten Police



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ORDER

BACKGROUND

The Township of Michipicoten Police (the Police) received the following request under the Municipal Freedom of Information and Protection of Privacy Act (the Act):

I am requesting information, regarding myself, which may be in the files of the Township Police and which is recorded in any fashion.

I am requesting that corrections be made to a number of incidents which are falsely recorded in the Michipicoten occurrence book of the Police department, 1990 and 1991.

I am also requesting access to any inquiries made by the Michipicoten Police in regard to members of Municipal Council [particularly myself] for 1991 [and August to December, 1990].

The Police identified several responsive records and compiled them in the form of a package numbered from pages 1-73. The Police released some of the pages (pages 1-19, 29, 31 and 32) but denied access to the rest pursuant to sections 8, 14 and 38 of the Act. The requester appealed the Police's decision and also claimed that additional responsive records had not been identified.

During mediation, the appellant agreed to discontinue his correction request and resubmit it, if necessary, after this appeal is resolved. Further mediation was not possible 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 the Police only.

RECORDS AT ISSUE

In their representations the Police withdrew some of the exemptions previously claimed. In particular, the Police indicated that no exemptions were being claimed for pages 26, 27, 28, 36 39, 40, 41, 43 and 44. I have reviewed these pages, and find that they do not attract the application of any mandatory exemptions. Therefore, they should be released to the appellant.

In addition, in my view, the severed information on pages 20-25, 42, 48 and 60 is not responsive to the request. This information consists of computer codes and other information which does not fall within the parameters of the appellant's request and, is therefore, outside the scope of this appeal.

The pages which remain at issue are 30, 33, 34, 35, 37, 38, 45, 46, 47, 49-59, and 61-73.

ISSUES:

The issues arising in this appeal are:

- A. Whether the Police conducted a reasonable search for additional responsive records.
- B. Whether any of the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- C. If the answer to Issue A is yes, whether the record qualifies for exemption pursuant to the discretionary exemption provided by section 38(b) of the Act.
- D. Whether the discretionary exemptions provided by sections 8 and 38(a) of the Act apply.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the Police conducted a reasonable search for additional responsive records.

In discussions with this office, the requester elaborated on his claim that additional responsive records had not been identified. Specifically, the requester stated that the Police must have records of the following:

- (a) Records of communication between the Township of Michipicoten or anybody acting on its behalf and the Police regarding the requester;
- (b) Records of an incident involving the appellant which occurred on or about August 1, 1990.

In its representations, the Police provide a detailed outline of the steps taken to locate responsive records. The Police state that there are several offices in their building: an identification office, a drug office, a criminal investigation office and a central records office. The Police state that:

Each person in charge of these offices has submitted all the records regarding the requester. Each of these persons verify that the searches were conducted and complete. These searches included OMPPAC files [a computer database], master files and all records held

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by the Michipicoten Township Police Service pertaining to the requester have been retrieved.

Having carefully reviewed the Police's representations, I am satisfied that the searches conducted by the Police for additional responsive records was reasonable in the circumstances.

ISSUE B: Whether any of the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.

In section 2(1) of the Act, "personal information" is defined, in part, as:

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

...

Having reviewed the pages of the record which remain at issue, I find that pages 30, 33, 34, 35, 37, 38, 45, 46, 47, 49-59, and 61-73 contain personal information that satisfies the definition of personal information in section 2(1) of the Act. The personal information on pages 51, 70 and 71 relate to the appellant only while the remaining pages contain personal information which, in my view, relates both to the appellant and other identifiable individuals.

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

Under Issue B, I found that pages 30, 33, 34, 35, 37, 38, 45, 46, 47, 49, 50, 52-59, 61-69, 72, and 73 contain personal information related to the appellant and other identifiable individuals.

Section 36(1) of the Act gives individuals a general right of access to personal information that relates to them, which is in the custody or under the control of institutions covered by 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(b), which reads as follows:

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
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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/her own personal information against other individuals' right to the protection of their personal privacy. If the Police determine that release of the information would constitute an unjustified invasion of the other individuals' personal privacy, then section 38(b) gives the Police discretion to deny the requester access to his/her own personal information (Orders M-22, M-28).

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester.

Section 14(3) lists a series of circumstances which, if present, would raise the presumption of an unjustified invasion of personal privacy. Section 14(3)(b) reads:

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;

The records contain personal information received by the Police as part of its investigation of alleged criminal conduct. The information severed from the pages at issue consists of names, addresses, telephone numbers and various other information about individuals other than the appellant. I am satisfied that this personal information was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the requirements for a presumed unjustified invasion of the personal privacy of the individuals other than the appellant under section 14(3)(b) has been satisfied.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy have been established, I must then consider whether any other provisions of the Act come into play to rebut this presumption.

Section 14(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 14(3) of the Act. In my view, the records do not contain any information that pertains to section 14(4).

Section 14(2) of the Act also provides a list of factors, a combination of which, if present in the circumstances of an appeal, could operate to rebut a presumption (Order M-63). Having carefully reviewed the records and considered all the representations, in my view, there is no combination of factors under section 14(2) which rebuts the presumption under section 14(3)(b) of the Act.

Therefore, in the circumstances of this appeal, I am of the view that disclosure of the pages at issue would constitute an unjustified invasion of the personal privacy of individuals other than the appellant and, therefore, qualify for exemption under section 38(b) of the Act.

Section 38(b) is a discretionary exemption. The Police have provided representations regarding the exercise of discretion to refuse to disclose the information at issue, and I find nothing to indicate that the exercise of discretion was improper.

ISSUE D: Whether any of the discretionary exemptions provided by sections 8 and 38(a) of the Act apply.

Under this issue, I will only refer to pages 51, 70 and 71 since they are the only pages which remain at issue given my finding under Issue B.

The Police claim that section 8(1)(g) applies to these pages. This section states:

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

interfere with the gathering of or reveal law enforcement intelligence
information respecting organizations or persons;

In their representations, the Police state the pages at issue contain information that was "collected and retained for intelligence purposes, respecting drug investigation targets". Page 51 is a handwritten note apparently composed by the appellant and pages 70 and 71 are, respectively, a sworn affidavit to obtain a search warrant and a search warrant, for the appellant's dwelling house. I have carefully reviewed the contents of these pages, and absent any further explanation or evidence, I am unable to see how section 8(1)(g) applies to them.

Therefore, I find that section 8(1)(g) does not apply and pages 51, 70 and 71 should be released to the appellant.

ORDER:

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1. I uphold the Police's decision to deny access to pages 30, 33, 34, 35, 45, 46, 47, 49, 50, 52, 53, 55, 61, 66, 67, 68, 69, 72, and 73 of the record.
2. I order the Police to disclose pages 26, 27, 28, 36, 39, 40, 41, 43, 44, 51, 70, and 71 to the appellant within 15 days of the date of this order.
3. I find that the Police's search for responsive records was reasonable in the circumstances.
4. In order to verify compliance with the provisions of this order, I order the Police to provide me with a copy of the sections of the record which are disclosed to the appellant pursuant to Provision 2 of this order, **only** upon request.

Original signed by: _____ June 15, 1993
Asfaw Seife
Inquiry Officer