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

ORDER M-116

Appeal M-910295

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 copies of ten administrative and operational procedures, 18 standing orders, seven directives, two training précis, information relating to two plainclothes courses, and 16 Staff Sergeant theses.

Following discussions with the Police, the requester agreed to narrow the scope of his request to four administrative and operational procedures, four standing orders, three directives, two training précis, information relating to two plainclothes courses, and one Staff Sergeant thesis. The Police granted partial access to records responsive to the narrowed request, with severances pursuant to sections 8(1)(e), 8(1)(g), 8(1)(l), 14 and 32(c) of the Act. The requester appealed the decision of the Police.

During mediation, the Police granted access to most of the information originally severed from the records, leaving at issue only four severances to the Staff Sergeant thesis. The thesis was written in 1979 by six police officers attending a course at the Charles O. Bick College. Severances 1 and 2 consist of the name of an individual found in two places in the thesis, Severance 3 consists of the names, signatures and badge numbers of the six authors of the thesis, and Severance 4 is the name and signature of one of the six authors. Access was denied to this information pursuant to section 14 of the Act.

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, the appellant and the six authors of the thesis. Written representations were received from the Police, the appellant and three of the six authors.

PRELIMINARY MATTER:

The Police's decision letter identified the decision-maker as the Coordinator of the Freedom of Information and Protection of Privacy Unit of the Police. The appellant submits that the Coordinator lacked the statutory jurisdiction to make the decision presently under appeal. The appellant submits:

> Section 3(2) of the Act does authorize the Metropolitan Police Services Board to "designate in writing **from among themselves** an individual or a committee of the body to act as head of the institution for the purposes of this Act". [The Coordinator] is not a member of the Board and so cannot by statute make the decision.

The Police have provided me with a copy of the resolution dealing with its delegation of authority under the Act. For the purposes of the Act, the "institution" is the Metropolitan Toronto Police Services Board.

Pursuant to section 3(2) of the Act, this board designated its Chair as the head of the institution for the purposes of this Act. The resolution indicates that, pursuant to section 49(1) of the Act, the Chair delegated the powers of the head under the Act in relation to records under the control of the Chief of Police to a number of officers of the institution, including the Coordinator of the Freedom of Information and Protection of Privacy Unit. Section 49(1) of the Act reads:

> A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

In my view, the resolution provides the Coordinator with the authority to issue a decision under the Act in respect of the records requested and I find that the head's powers were properly delegated to the decision-maker, the Coordinator of the Freedom of Information and Protection of Privacy Unit.

ISSUES:

The issues arising in this appeal are:

A. Whether the record contains "personal information" as defined in section 2(1) of the Act.

B. Whether the mandatory exemption provided by section 14 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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

Personal information is defined, in part, in section 2(1) of the Act as follows:

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

> (c) any identifying number, symbol or other particular assigned to the individual,
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> ...
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> ...
>
> (g) the views or opinions of another individual about the individual, and
>
> (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;

The Police submit that the record contains the personal views and opinions of the six authors, as students in a management course. The three authors who made representations in response to the Notice of Inquiry agree. The Police submit:

> The Charles O. Bick College is a dedicated training establishment, created and operated for the sole purpose of offering courses in various disciplines and subjects, to members of police forces, primarily the Metropolitan Toronto Police Force.
> ...
>
> The six officers who were collectively responsible for the records under appeal were students in ... a management course in 1979. One of their assignments was to research and write a paper on an assigned topic - which just happened to be the complaints system - and asked to give their opinion on the present one and/or to propose an alternative if deemed desirable.
> ...
>
> An academic environment presupposes an atmosphere and opportunity to be spontaneous, to speculate, to play devil's advocate, to ruminate and to ponder, or perhaps propose outrageous solutions that may prove innovative. Students (even police officers who are students) may conduct theoretical forays into arcane areas of personnel management or organizational behaviour. These efforts must have as their goal excellence and, at times, iconoclastic thinking, ...

> It is only right and proper that an employee's signature on a government document or record should be accessible as long as the document is extant; however it is a quantum leap to suggest that the framers of the Act intended any member of the public to have untrammelled rights to peer over the hypothetical shoulder of a 'student' to see what he or she has written - at the time or decades later.

The appellant submits that the severed information does not qualify as personal information. In respect of Severances 1 and 2, the appellant submits that the name should not be deemed to be personal information within the meaning of section 2(1) of the Act, because the record does not contain or reveal any information of any kind about that person other than his or her name. Having reviewed the record, I disagree. The two sentences from which name of the individual has been severed consist of the opinion of the authors about the individual, and this information qualifies as the personal information of the individual. Disclosure of the name would connect the opinion to an identifiable individual and, therefore, it is my view that the individual's name qualifies as his or her personal information.

In respect of Severances 3 and 4, the appellant submits that the badge numbers are not personal information within the meaning of the Act because the police are required to identify themselves to members of the public by name and badge number. In my view, information which may be available to the public is not precluded from qualifying as personal information as defined under the Act. The badge numbers are identifying numbers assigned to an individual, and consist of recorded information about that individual. Accordingly, I find that each badge number qualifies as the personal information of the person to whom it relates.

The appellant submits that subparagraph (e) of the definition is not applicable because it is the names and badge numbers which are being withheld, not the content of the record and any opinions therein, and the opinions expressed in the record relate to another individual (the person whose name is the subject of Severances 1 and 2). I have reviewed the record and, in my view, the opinions expressed therein relate not only to another individual, but also to the citizen's complaint system. Additionally, I find that the opinions were expressed by the authors in their personal capacity as 'students', not as part of their professional responsibilities as police officers, and qualify as their personal information.

The appellant submits that subparagraph (h) of the definition is not applicable because the authors' names do not appear with nor would their disclosure reveal other personal information relating to the authors. As with Severances 1 and 2, it is my view that disclosure of the names would connect the opinions to identifiable individuals and, therefore, it is my view that the authors' names and signatures qualify as the personal information of the authors.

ISSUE B: Whether the mandatory exemption provided by section 14 of the Act applies.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 14(1)(f) of the Act 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.

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 the section 14(1)(f) exception applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

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 the individual to whom the information relates. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(2) of the Act provides some criteria to be considered in making this determination.

In his representations, the appellant submits that section 14(2)(a) is a relevant consideration weighing in favour of disclosure of the personal information contained in Severances 3 and 4. This section reads:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

The appellant submits that the record contains ill considered and intemperate remarks, and that the disclosure of the names of the authors is desirable for the purposes of subjecting the activities of the Police to public scrutiny. The appellant submits that the authors of the paper in question may be in the leadership ranks of the Police by now and, therefore, it is particularly important for the public to know where they stand (or at least where they stood) on the important issue of public complaints procedures. The appellant also submits that when a person joins a police organization, he or she must, as a condition of their employment, accept certain limitations to their rights and privacy. The appellant submits that police officers

are required to live in a certain area, to refrain from unauthorized secondary employment, not to comment publicly on certain issues without authorization, to identify themselves by name and badge number on request, and their private lives are subject to scrutiny.

In the circumstances of this appeal, the authors were not developing policy or dealing with a citizen complaint. The opinions and views expressed about the citizen complaint system in place in 1979 have been disclosed to the appellant. The authors of the record were involved in an academic exercise, and I am not satisfied that disclosure of their names in this context is desirable for the purposes of subjecting the activities of the Police to public scrutiny. Accordingly, I find that section 14(2)(a) is not a relevant consideration in the circumstances of this appeal.

I have carefully reviewed the record and the representations provided by the appellant, the Police, and the authors of the record. In my view, in the circumstances of this appeal, there are no factors present which weigh in favour of disclosure of the severed information. Having found that the information contained in Severances 1, 2, 3 and 4 qualifies as personal information, and in the absence of any factors weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) does not apply, and the severed information is properly exempt under section 14 of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: March 31, 1993
Holly Big Canoe
Inquiry Officer