



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-265**

## **Appeal M-9300111**

### **Kingston Police Services Board**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Kingston Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act), for access to records relating to submissions made by police officers and civilian employees to the Chief of Police or his delegate about "difficulties of their jobs within the Kingston Police Force". The Police identified records which were responsive to the request and provided access to one of these documents in full. The Police, however, denied access to the two remaining records, one in whole and the other in part, based on the exemptions contained in sections 7(1), 8(1)(c), 8(1)(i), 11(f) and 11(g) of the Act.

The requester subsequently clarified his request and the Police provided full access to an additional record which responded to the clarified request. The requester appealed the Police's decision to deny access to the two records which had not been disclosed.

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. Both parties made representations. In their representations the Police withdrew their reliance upon the exemptions provided in sections 11(f) and 11(g) of the Act. Those portions of the record for which sections 8(1)(c) and (i) of the Act were claimed are included in my discussion of Issue A and, accordingly, will not be dealt with further in this order.

The records which remain at issue in this appeal are the undisclosed portions of two documents which relate to a strategic planning process undertaken by the Police, described as follows:

1. A six-page document entitled "Section II - Patrol Audit Report"; and
2. Those portions of an 18 page document not disclosed which were produced from a computer record in the possession of the Police, consisting of internal employee suggestions.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the discretionary exemption provided by section 7(1) of the Act applies to the records.
- B. If the answer to Issue A is yes, whether there is a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the exemption, pursuant to section 16 of the Act.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the discretionary exemption provided by section 7(1) of the Act applies to the records.**

Section 7(1) of the Act reads:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

"Advice" pertains to the submission of a suggested course of action which will ultimately be accepted or rejected by its recipient in the deliberative process (Order 118). "Recommendations" should be viewed in the same vein (Order P-348).

In its representations, the Police maintain that all of the portions of the records withheld consist of recommendations and that:

Each one of the recommendations not disclosed contain[s] more than mere information ... and suggest[s] a course of action which, upon the completion of a study or within the confines of a larger project, will ultimately be accepted or rejected.

I have carefully reviewed the records and the representations of the parties. In my view, those portions of the records which were not disclosed to the appellant suggest courses of action which will ultimately be subject to acceptance or rejection by the Police in its deliberative process and, as such, qualify for exemption under section 7(1) of the Act.

Section 7(2) of the Act lists certain mandatory exceptions to the section 7(1) exemption. Specifically, sections 7(2)(a), (b) and (i) state:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;

- (i) a report of a committee or similar body within an institution, which has been established for the purpose of preparing a report on a particular topic;

The Police indicate in their representations that all factual and statistical survey material responsive to the appellant's request has already been disclosed to the appellant. I have examined the records and I agree that those portions which have been withheld do not fall within either of the exceptions set out in sections 7(2)(a) and (b) of the Act.

In Order 168, Commissioner Tom Wright discussed the application of the exception provided by section 13(2)(j) of the Freedom of Information and Protection of Privacy Act which is similar in wording to section 7(2)(i) of the Act. At page 7 of that Order, he states:

Subsection 13(2)(j) is unusual in the context of the Act in that it is a mandatory exception to the application of an exemption for a type of document, a report. In other words, even if the record at issue contains advice or recommendations pursuant to subsection 13(1), the head must disclose the entire record if it is a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees.

For the purposes of this appeal, I adopt the reasoning set forth in Order 168. In my view, in order for the exception provided by section 7(2)(i) of the Act to apply, it is necessary to establish that:

1. The document must be a "report" within the meaning of the Act.
2. The report must have been prepared by a committee or similar body within an institution.
3. The committee or similar body must have been established for the purpose of preparing a report on a particular topic.

I will evaluate each part of the test as it relates to each record separately, beginning with the record entitled "Section II - Patrol Audit Report".

### **Part One of the Test**

The word "report" is not defined in the Act. However, it has been held in a number of previous orders issued by the Commissioner's office that for a record to be a "report" it 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.

Upon reviewing the record entitled "Section II - Patrol Audit Report", I have concluded that it constitutes a formal account of the results of the collation and consideration of information and, therefore, qualifies as "a report" for the purposes of section 7(2)(i) of the Act.

### **Part Two of the Test**

To determine whether the record entitled "Section II - Patrol Audit Report" satisfies the second part of the exception in section 7(2)(i), it is necessary to examine the mandate of the body which produced it.

The Police indicate that this record was produced by its Strategic Plan Working Committee (the Committee). This group represented one of two committees charged with preparing a long-range strategic plan for the police force. The mandates of these committees are set out in a 1992 memorandum by the Police Chief entitled "Strategic Plan Development", a portion which reads as follows:

"WORKING COMMITTEE - a group of eight to ten members representing a cross section of the Force. Their duties, among others would include development of the survey, strategies for survey distribution and collection, analysis of data, recommending broad goals and objectives, recommending operational/organizational structures, providing input gathered from Force members."

The survey referred to in the Working Committee's mandate is a survey of public opinion and does not comprise any part of the records at issue in this appeal.

I find that the report was prepared by a committee within the Police and, accordingly, that Part Two of the test has been met.

### **Part Three of the Test**

As stated above, the mandate of the Committee was to produce a long-range strategic plan. In their representations, however, the Police submit that:

The lists of recommendations produced are not the report which the committee was tasked with completing. The duties of the Working Committee in concert with the Management Committee were clearly laid out in the 1991 memo of the Chief of Police dealing with the development of a Strategic Plan. The recommendations which are the subject of this

appeal were sent directly to the Chief and were not dealt with by the Management Committee because of the Community Policing Initiative; which, as previously stated, negated the whole process. The draft "Strategic Plan" was never produced. These documents were the sole output of the Working Committee.

As I interpret these submissions, it is the position of the Police that, for section 7(2)(i) to apply, the report prepared by a committee must relate **solely** to the topic of inquiry for which the committee was established, in this case, the creation of a long-range strategic plan.

I find, however, that even though the ultimate mandate of the Committee was to prepare a long-range strategic plan, it is clear that within that mandate, the Committee was charged with a number of objectives and duties. In particular the Committee was responsible for:

" ... recommending broad goals and objectives, recommending changes to operational/organizational structures, [and] providing input gathered from Force members".

The content of the record entitled "Section II - Patrol Audit Report" falls within at least one of those enumerated duties.

In my opinion, it would place too restrictive a reading on section 7(2)(i) of the Act to hold that the exception only applies to those reports which a committee is **specifically** directed to prepare. I believe that such an interpretation of the section is not borne out by its wording. In the present case, I also find that the report prepared by the Working Committee fell within the ambit of its mandate, regardless of the fact that it cannot be characterized as a report "recommending broad goals and objectives". If a committee decides to prepare a report, the subject matter of which is within its mandate, then, despite the fact that it is neither the committee's final or ultimate report, nor the report the committee was originally requested to prepare, the exception in section 7(2)(i) ought to apply. Therefore, I find that the third part of the test described above has been met.

Accordingly, as all three parts of the test have been satisfied, I find that the record entitled "Section II - Patrol Audit Report" falls within the exception provided by section 7(2)(i) of the Act to the section 7(1) exemption.

It is my view, however, that the remaining record, which contains internal employee suggestions, does not constitute a "formal statement or account" but is merely an accumulation of information. In addition, the information in this record shows no evidence of having been collated or otherwise organized for consideration. As such this record does not satisfy the test of constituting a "report" and does not, therefore, fall within the exception provided by section 7(2)(i) of the Act.

**ISSUE B: If the answer to Issue A is yes, whether there is a compelling public interest in the disclosure of the record that clearly outweighs the purpose of the exemption, pursuant to section 16 of the Act.**

I must now consider whether the "public interest override" found in section 16 of the Act ought to apply to the 18-page record containing internal employee suggestions which I have previously found to be exempt under section 7(1). Section 16 of the Act states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

There are certain requirements in section 16 of the Act which must be satisfied in order to invoke the application of the so-called "public interest override"; there must be a **compelling** public interest in disclosure, and this compelling public interest must **clearly** outweigh the **purpose** of the exemption, as distinct from the value of disclosure of the particular record in question (Order 24).

While the burden of proof as to whether an exemption applies falls on the institution, the Act is silent as to who bears the onus of proof in respect of section 16. Where the application of section 16 to a record has been raised by an appellant, it is my view that the burden of proof cannot rest wholly on the appellant, where he or she has not had the benefit of reviewing the record before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom, if ever, be met.

The appellant submits that there is a compelling public interest in disclosure of the record for the following reasons:

"... each of the supposed recommendations made in these records all apply to "**public safety**" and the manner in which policing is performed on the streets of our city and internally by the police administration."

I do not agree that because a primary purpose of a police force is to preserve public safety, **any** recommendations relating to the operations of a police force must involve public safety. A municipal police force is a sophisticated organization having many operational facets, only **some** of which have any **direct** bearing on the safety of the public. I have carefully reviewed the record at issue in this appeal and I find that, although all of the suggestions contained in the document are directed at the improvement of the operations of the police force, the preponderance of them have no direct bearing on the safety of the public.

There are some recommendations in the record which might have some link to public safety, however, that does not dispose of the issue. Although public safety is an issue of public interest, in order for section 16 to apply that public interest must be both compelling and clearly outweigh the purpose of the exemption.

Having reviewed the record, I am of the opinion that there does not exist a compelling public interest in the disclosure of the recommendations contained in the records which clearly outweighs the purpose of the exemption provided by section 7(1) of the Act. Accordingly, I find that section 16 of the Act does not apply to the record at issue.

**ORDER:**

1. I uphold the decision of the Police not to disclose the 18-page record containing internal employee suggestions.
2. I order the Police to disclose to the appellant the six-page record entitled "Section II - Patrol Audit Report" within fifteen (15) days of the date of this order.
3. In order to verify compliance with this order, I order the Police to provide me with a copy of the record described in Provision 2 as disclosed to the appellant, **only** upon request.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ February 9, 1994