



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-332

Appeal M_9400098

Hamilton_Wentworth Regional Police Services Board



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ORDER

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested a copy of records from the Hamilton-Wentworth Regional Police Services Board (the Police) which would confirm whether or not he is the subject of a police investigation. The appellant is particularly interested in determining whether or not he is under surveillance by the Police. The Police refused to confirm or deny the existence of any record which would be responsive to this request pursuant to section 8(3) of the Act.

A notice of inquiry was provided to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

LAW ENFORCEMENT - REFUSAL TO CONFIRM OR DENY

The Police state that they are relying on section 8(3) of the Act to refuse to confirm or deny the existence of records responsive to the request. This section provides that:

A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

In relying on section 8(3) of the Act, the Police must do more than merely indicate that records of the nature requested, if they exist, would qualify for exemption under sections 8(1) or (2). In addition, the Police must establish that disclosure of the mere existence or non-existence of such a record would communicate to the appellant information that would fall under either section 8(1) or (2) of the Act (Order P-542).

The Police submit that, if records of the nature requested exist, they would qualify for exemption under sections 8(1)(a) and 8(2)(a). Section 8(1)(a) provides that:

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

interfere with a law enforcement matter;

Section 8(2)(a) states that:

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 for records of the type requested, if they exist, to qualify for exemption under these sections, the matter which would generate the records must satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. This provision reads:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The purpose of the exemption contained in section 8(1)(a) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter. The Police bear the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm, and, in my view, the Police discharge this onus by establishing a clear and direct linkage between the disclosure of the specific information and the harm alleged (Orders P-534 and P_542).

The Police submit that records of the nature requested, if they exist, would relate to the use of surveillance by the Police in their investigation into a violation of law which may result in criminal proceedings being instituted against an individual(s). The Police further provide evidence as to how the disclosure of such records would interfere with this type of law enforcement matter.

Having reviewed the representations of the Police, I am satisfied that records of the type requested, if they exist, would relate to a law enforcement matter, as that term is defined in section 2(1) of the Act. I am also satisfied that disclosure of records of the type requested, if they exist, could reasonably be expected to interfere with a law enforcement matter as contemplated by section 8(1)(a) of the Act. Accordingly, I find that records of the type requested, if they exist, would qualify for exemption under section 8(1)(a) of the Act.

I further find that confirmation of the existence or non-existence of records responsive to this request would communicate to the appellant information which would fall under section 8(1)(a) of the Act. Accordingly, section 8(3) of the Act is applicable to the information requested.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ June 15, 1994