



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-362**

**Appeal M-9400171**

**Haldimand-Norfolk Police Services Board**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Haldimand-Norfolk Police Services Board (the Police) received a request for access to the complete file concerning the arrest of the appellant. The Police relied on the following exemptions contained in the Act to deny access to the records:

- law enforcement - section 8(1)(b)
- right to a fair trial - section 8(1)(f)

A Notice of Inquiry was provided to the appellant and the Police, and representations were received from both parties. In the Notice of Inquiry, the Appeals Officer noted that portions of the police officer's notebook appeared to be not responsive to the appellant's request as these entries dealt with other incidents which did not involve the appellant. In his representations, the appellant did not address this matter. I have independently reviewed the pages in question, page 3 and part of page 4, and find that they are not responsive to the appellant's request and will not, therefore, be included in the records discussed in this order. In addition, this office confirmed with the Police that, because of an error in numbering the records, there is no page 7 included in the records.

The records remaining at issue in this appeal consist of the following portions of the file which is maintained by the Police concerning the appellant's arrest:

Record 1 - Officer's notes - pages 1, 2, part of page 4, pages 5 and 6;

Record 2 - Occurrence Report - pages 8 to 11;

Record 3 - Fax cover sheet - page 12;

Record 4 - CPIC form - page 20;

Record 5 - Occurrence Report - pages 25 to 29.

## **DISCUSSION:**

### **LAW ENFORCEMENT AND RIGHT TO A FAIR TRIAL**

The Police submit that the exemptions contained in sections 8(1)(b) and (f) of the Act apply to the records. These provisions read as follows:

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

- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

- (f) deprive a person of the right to a fair trial or impartial adjudication;

In order for section 8(1)(b) to apply, it must be established that the record relates to a "law enforcement proceeding".

The Police submit that, as a result of his arrest, the appellant has filed a complaint under the Police Services Act against the officer involved and that the investigation of that complaint, which is still ongoing, is a "law enforcement" proceeding within the meaning of the Act. Consistent with previous orders of the Commissioner's office, I find that an investigation of a complaint into an allegation of police wrongdoing, conducted under the Police Services Act, satisfies the definition of the term "law enforcement" proceeding in section 2(1) of the Act.

In order for the exemptions set out in sections 8(1)(b) and (f) to apply, the Act requires the existence of a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the Police must establish a clear and direct linkage between the disclosure of the specific information and the harm which is alleged.

With respect to section 8(1)(b), the Police submit that release of the records "would have, at the time of the original request, interfered with the investigation into the complaint."

In my view, the Police have not provided sufficient evidence to establish a clear and direct linkage between the disclosure of the records and any interference with the ongoing investigation pursuant to section 8(1)(b) of the Act. Accordingly, I find that section 8(1)(b) has no application to the records at issue in this appeal.

With respect to section 8(1)(f), the Police submit that, should the investigation of the complaint proceed to a hearing under the Police Services Act, the release of the records will influence the testimony of the appellant and, thereby, prejudice the rights of the arresting officer to a fair trial. The Police do not, however, explain precisely how this prejudice will occur.

I have reviewed the records and the representations of the parties. Based on the evidence before me and my independent review of the records, I am not satisfied that the police have established a clear and direct linkage between the disclosure of the records and any prejudice to a person's right to a fair trial. Accordingly, I find that the requirements of the exemption in section 8(1)(f) have not been met.

As no other exemptions have been claimed for the records they should be disclosed to the appellant.

**ORDER:**

1. I order the Police to disclose the records, with the exception of page 3 and that portion of page 4 which are not responsive to the request, to the appellant within fifteen (15) days following the date of this order. I have included a highlighted copy of page 4 with a copy of the order which is being sent to the Freedom of Information and Privacy Co-ordinator of the Police. The highlighted portion should **not** be released.
2. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

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

\_\_\_\_\_ July 28, 1994