



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-366

Appeals M-9400109, M-9400142, M-9400144, M-9400145, M-9400146, M-9400147, M-9400149, M-9400150 and M-9400151

Brockville 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>

NATURE OF THE APPEALS:

This order relates to nine appeals under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellants have requested access to a copy of a report from the Brockville Police Services Board (the Police). The report relates to an investigation conducted by an officer of the Ottawa Police Service (the investigator) into allegations of misconduct against a named officer employed with the Police.

The Police identified the following two records as being at issue in this appeal:

1. A report submitted by the investigator titled "Brockville Police Service - Investigation". The report is dated November 1993 and consists of 47 pages including 2 appendices.
2. A second report submitted by the investigator, titled "Brockville Police Service - Investigation Secondary Findings". The report is dated November 1993 and consists of 23 pages including 3 appendices.

The Police rely on the following exemptions to deny access to these records in their entirety:

- law enforcement - sections 8(1)(a), (b), (d) and (f) and 8(2)(a)
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse requester's own information - section 38(a)

A Notice of Inquiry was provided to the parties to the appeal. Representations were received from the Police and seven of the appellants.

DISCUSSION:

LAW ENFORCEMENT

The Police claim that section 8(2)(a) applies to the records at issue in this appeal.

In order to qualify for exemption under section 8(2)(a) of the Act, a record must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

Part One

In order to satisfy the first part of the test (i.e. to be a report), a record 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 (Order 200).

The records contain views, opinions, findings of fact, summaries, results, conclusions and recommendations. I am therefore satisfied that the records qualify as "reports" within the meaning of section 8(2)(a) of the Act as they represent the end result of the collation and consideration of the factual information compiled by the investigator.

Part Two

I must now determine if the investigation qualifies as a "law enforcement investigation" within the meaning of section 8(2)(a) of the Act.

The term "law enforcement" is defined in section 2(1) of the Act as:

- (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 Police submit that the reports were prepared in the course of a law enforcement investigation into allegations of misconduct against a named officer. Each of the allegations concerns offences against the Criminal Code and/or misconduct as outlined in the Regulations and Code of Conduct of the Police Services Act.

As a result of the investigation and after consultation with the Regional Crown Attorney, the investigator prepared two charges of discreditable conduct under the Police Services Act against the named officer. On March 2, 1994, this officer entered a plea of guilty to the two charges and was demoted for a period of six weeks. He did not appeal this decision to the Ontario Civilian Commission of Policing Services, the tribunal which entertains such appeals and has the power to impose independent sanctions or penalties.

Some of the appellants indicate that the intention of the reports was to conduct a review of the policies, procedures and investigative techniques of the law enforcement agency. They therefore maintain that the reports were not created in the course of law enforcement. While this may have been one of the stated goals of the investigation, the contents of the reports focus on the specific allegations made against the named officer.

In the general case, the definition of "law enforcement" does not extend to employment-related disciplinary matters (Orders 182 and 192). However, in this case, the reports were created in the course of an investigation to determine if the conduct of the named officer was "unlawful" in the sense that it constituted an offence against discipline under a regulation made pursuant to the Police Services Act. Moreover, the allegations also involve conduct, which if substantiated, would have constituted an offence under the Criminal Code. The investigations into alleged offences under the Police Services Act and the Criminal Code could have resulted in a hearing before a tribunal or court respectively at which penalties for such conduct could have been imposed.

Therefore, I find that the second part of the section 8(2)(a) test has been met as the reports were prepared in the course of a law enforcement investigation.

Part Three

As I have previously indicated, the reports were prepared by an officer from the Ottawa Police Service, an agency which has the function of enforcing and regulating compliance with a law. Accordingly, in my view, the third part of the test for the application of section 8(2)(a) has been satisfied.

As all of the requirements of the section 8(2)(a) test have been met, I find that the records qualify for exemption under section 8(2)(a) of the Act. This finding applies to the appeal filed by a group that is not an individual.

DISCRETION TO REFUSE ACCESS TO ONE'S PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual. I have reviewed the information at issue and I find that it satisfies the definition of "personal information". In my view, the personal information relates to the remaining eight appellants and other identifiable individuals.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(a) of the Act, the institution has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. One of these exemptions is that of law enforcement (section 8(2)(a)).

Several of the appellants who submitted representations indicated that they co-operated with the investigation on the basis that they would receive a copy of the reports. Although they have been provided with the conclusions concerning the allegations, they indicate that they have no means to determine if the complaints were fairly dealt with and what factors were used by the investigator to reach his conclusions.

In this context, I would note that section 8(2)(a) is a unique exemption in that it enables the head of an institution to refuse to disclose an entire document, the "report". Unlike other exemptions in the Act, there is no obligation to disclose portions of the reports to the appellants.

I have found that section 8(2)(a) applies to the two reports containing the personal information of some of the appellants. Therefore, the exemption provided by section 38(a) applies to the two records at issue in the appeals filed by the individual appellants.

Because of the manner in which I have disposed of this issue, I need not consider the application of the other law enforcement exemptions or the invasion of privacy exemption.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Anita Fineberg
Inquiry Officer

August 2, 1994