



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-383

Appeal M-9400121

Metropolitan Toronto 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 appellant originally requested copies of records from the office of the Public Complaints Commissioner (the PCC) relating to two files. These files relate to complaints made by the appellant against several police officers. Part of the request was transferred to the Metropolitan Toronto Police Services Board (the Police) pursuant to section 25 of the Freedom of Information and Protection of Privacy Act. This appeal arises from the decision of the Police.

The Police granted partial access to the records in their custody and control and indicated that some information contained in the police officers' notebooks was not responsive to the request. The Police rely on the following exemptions to withhold the remaining information:

- facilitate commission of unlawful act - section 8(1)(l) (Records 3, 12, 24 and 31)
- invasion of privacy - sections 14 and 38(b) (Records 1, 2, 5 - 23, 25 - 27 and 32 - 37)
- information published or available - section 15(a) and 38(a) (Record 38)

The records at issue in this appeal may be generally described as computer printouts, internal correspondence, interview notes and statements, police officers' notes, investigation logs, a record of arrest, and transcripts of hearings. The records at issue are described in greater detail in Appendix "A" to this order. For ease of reference, sequential record numbers have been given to each record.

In reviewing the record, I note that there is some duplication of pages. Page 189 is a duplicate of page 94. Page 221 is essentially a duplicate of page 211, except that page 221 has a handwritten note at the top of the page. Pages 223-224 are duplicates of pages 213-214.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties. In their representations, the Police indicate that they are no longer relying on section 8(1)(l) to exempt the information contained in Records 3, 12, 24 and 31. The Police submit that the portions of the records to which section 8(1)(l) was applied are not responsive to the request.

PRELIMINARY MATTER:

As I indicated above, the Police claim that the portions of Records 3, 12, 24 and 31 to which section 8(1)(l) was originally applied are not responsive to this request.

In addition, the index provided to the Commissioner's office with the copy of the records indicates that portions of Records 4, 12, 28, 29, 30 and 34 are not responsive to the request. In their decision letter the Police advised the appellant that the information which had been removed from the police officers' notebooks related to other events which occurred during their tour of duty and did not relate to the appellant.

In his representations, the appellant indicates that all information which is contained in his file is relevant, otherwise it would not be there. He submits, therefore, that all of the records are relevant to his request and

should be disclosed to him.

I have reviewed the records and determined that the portions of Records 12, 28, 29 and 30 which have been withheld from the appellant are not responsive to the request, as they deal with incidents other than the one involving the appellant. Record 4 is a computer printout which relates to strictly administrative police matters and Record 34 is a facsimile cover sheet. In my view, neither of these pages is responsive to the request.

Additionally, in my view, the portions of the records which the Police initially exempted under section 8(1)(l) are not responsive to the request. They deal with communications related to the officers' availability or are related to the technical aspects of the Police's computer system and not to any incident involving the appellant. As these are the only pages to which section 8(1)(l) has been applied, I will not consider this section further in this order.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where 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.

I have reviewed the information at issue and I find that it satisfies the definition of "personal information". In my view, with the exception of Record 23, the personal information is about the appellant and other identifiable individuals. Record 23 contains only the personal information of individuals other than the appellant.

The information which has been withheld from Records 13 and 27 is part of a statement given by the appellant. In these circumstances, I find that there will be no unjustified invasion of the personal privacy of the individual referred to in the statement if it is disclosed to the appellant.

The information which has been withheld from Records 33 and 37 consists of a portion of the statement given by the appellant which was recorded by a police officer and contained in the supplementary record of arrest. In the circumstances of this appeal, I find that there will be no unjustified invasion of the personal privacy of the individual referred to in the statement if it is disclosed to the appellant.

The Police have withheld the information recorded under next of kin in the "Defendant's Particulars" section of the record of arrest (Record 32). This same information which is contained in Record 36 was released to the appellant. I note, from a review of the entire record, that this information is known to the appellant. In the circumstances of this appeal, I find that there will be no unjustified invasion of the personal privacy of the individual referred to in Record 32 under "Defendant's Particulars" if it is disclosed to the appellant.

For greater clarity, I have highlighted the portions of Records 13, 27, 32, 33 and 37 for which disclosure would not constitute an unjustified invasion of personal privacy. These portions should be disclosed to the appellant.

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(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits an institution from releasing this information.

In both these situations, sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

I will now address Record 23 which contains only the personal information of individuals other than the appellant.

Section 14(1)

Record 23 consists of computer generated information about the police officers named in the appellant's complaint to the PCC.

The Police claim that disclosure of this record would be an unjustified invasion of personal privacy under section 14(3)(b) because the information was compiled as part of an investigation into a possible violation of law.

The appellant claims that the public interest override provided by section 16 applies in this case, however, he provides no evidence to support his contention.

Having reviewed the evidence before me, I have made the following findings:

- (1) I am satisfied that the information contained in Record 23 was compiled as part of an investigation under the Police Services Act in response to the appellant's complaint to the PCC. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established.
- (2) I find that Record 23 does not contain any information to which section 14(4) applies.
- (3) The appellant has provided no evidence to support the application of the "public interest override" in section 16, and I find that it does not apply.
- (4) Because the information in Record 23 meets the requirements for the presumed unjustified invasion of personal privacy in section 14(3)(b), I find that the exemption in section 14(1) applies to it in its entirety.

I have found that the remaining records contain the personal information of the appellant and one or more other individuals. With the exception of Record 38, I will now consider whether the exemption provided by section 38(b) applies to them. Record 38 will be dealt with under section 15(a).

Section 38(b)

The Police submit that the presumption in section 14(3)(b) also applies to the personal information in the records which will be dealt with in this part. The Police also state that some of the records contain information which relates to employment history (section 14(3)(d)) and to a medical condition or evaluation (section 14(3)(a)).

The Police further state that the information in some of the records has been supplied in confidence (section 14(2)(h)), and that this factor favours non-disclosure of the information.

Having reviewed the evidence before me, I have made the following findings:

- (1) I am satisfied that the information at issue was compiled as part of an investigation under the Police Services Act in response to the appellant's complaint to the PCC. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established.
- (2) I find that the records do not contain any information to which section 14(4) applies.
- (3) The appellant has provided no evidence to support the application of the "public interest override" in section 16, and I find that it does not apply.
- (4) I find that, with the exception of the information which I have highlighted on the copy of Records

13, 27, 32, 33 and 37 which I have sent to the Police's Freedom of Information and Privacy Co-ordinator, disclosure of the personal information contained in Records 1, 2, 5 - 22, 25 - 27 and 32 - 37 would constitute an unjustified invasion of personal privacy. Accordingly, the undisclosed portions of these records are properly exempt from disclosure under section 38(b) of the Act.

INFORMATION PUBLISHED OR AVAILABLE

As I indicated above, section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. However, 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, including the one provided by section 15 of the Act, would otherwise apply to that information.

Section 15(a) of the Act states as follows:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or
is currently available to the public;

The Police claim that this exemption applies to Record 38, which consists of transcripts from two proceedings in the Ontario Court (Provincial Division).

The appellant submits that the general public is not able to freely access court records without specific information such as court dates and the name of the individual.

In Order P-327, former Assistant Commissioner Tom Mitchinson found that this exemption was intended to provide government organizations with "... the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access; it is not intended to be used in order to avoid an institution's obligations under the Act." I agree with this approach and adopt it for the purposes of this appeal. In the circumstances of this appeal, where the record is a complete transcript of two court proceedings, I find that the balance of convenience favours the use of the exemption.

In Order 123, former Commissioner Sidney B. Linden dealt with the exemption in section 22(a) of the Freedom of Information and Protection of Privacy Act, which corresponds to section 15(a) of the Act. In discussing this exemption, he stated that "in my view, whenever an institution relies on subsection 22(a), the head has a duty to inform the requester of the specific location of the records or information in question."

In their representations, the Police submit that the appellant was notified verbally on two separate occasions that the transcripts were available from the appeal court. The Police make no reference to the location of the transcripts in their decision letter to the appellant. Nor do they indicate in their representations that the appellant was provided with sufficient information which would allow him to contact the appropriate court

office to obtain the transcripts.

In the circumstances of this appeal, I am not satisfied that the appellant has been informed of the actual location from which the transcripts may be obtained.

In conclusion, I find that Record 38 qualifies for exemption under section 15(a), but I will order the Police to inform the appellant, in writing, of the location at which the transcripts can be obtained. As I have found that section 15(a) applies, the exemption provided by section 38(a) applies to these pages.

ORDER:

1. I order the Police to disclose the information contained in Records 13, 27, 32, 33 and 37 which has been highlighted on the copy of the records that is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I uphold the decision of the Police to deny access to the remaining portions of the records.
3. I order the Police to disclose the portions of the records described in Provision 1 within thirty-five (35) days following the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
4. I order the Police to advise the appellant of the location at which Record 38 may be obtained, within fourteen (14) days after the date of this order.
5. 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 disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

September 6, 1994

Laurel Cropley
Inquiry Officer

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

| RECORD | PAGE(S) | EXEMPT | DESCRIPTION | DISPOSITION |
|---------------|----------------|---------------|--|--|
| 1 | 4-6 | Part | Computer printout | Upheld |
| 2 | 16 | Total | Internal Correspondence to Insp. Shillington from Det. Dixon | Upheld |
| 3 | 18 | Total | CIPC Message | Upheld |
| 4 | 22, 23, 25 | Part | Computer printout | Upheld |
| 5 | 27 | Part | Computer printout | Upheld |
| 6 | 31, 32, 34-36 | Part | Summaries of Statements Form - Complainant, Witness and Officer statements | Upheld |
| 7 | 42 | Part | Public Complaint Report | Upheld |
| 8 | 46 | Part | Public Complaint Report from Appellant | Upheld |
| 9 | 53 | Part | Complaint form by Appellant | Upheld |
| 10 | 60-65 | Part | Investigation Log | Upheld |
| 11 | 67 | Part | Video Cassette Control Log Sheet | Upheld |
| 12 | 70-72, 74-82 | Part | Officer's notes re: call from dispatch | Upheld |
| 13 | 94 | Part | Appellant's interview | Disclosure according to highlighted copy |
| 14 | 95 | Total | Telephone interview with witness | Upheld |
| 15 | 96-98 | Part | Witness interview | Upheld |
| 16 | 99-101 | Part | Witness statement | Upheld |
| 17 | 102-3 | Total | Statement of Officer | Upheld |
| 18 | 104 | Total | Statement of Officer | Upheld |
| 19 | 105-106 | Total | Statement of Officer | Upheld |
| 20 | 107 | Total | Statement of Officer | Upheld |
| 21 | 108 | Total | Statement of Officer | Upheld |
| 22 | 109 | Total | Statement of Officer | Upheld |
| 23 | 113-117 | Total | Computer Printout | Upheld |
| 24 | 142-143 | Part | Computer Printout | Upheld |

| RECORD | PAGE(S) | EXEMPT | DESCRIPTION | DISPOSITION |
|--------|---------|--------|--|--|
| 25 | 150 | Part | Investigation Log | Upheld |
| 26 | 176 | Total | Statement from Officer | Upheld |
| 27 | 189 | Part | Duplicate of page 94 | Disclosure according to highlighted copy |
| 28 | 196 | Part | Police record | Upheld |
| 29 | 198 | Part | Police record | Upheld |
| 30 | 199-202 | Total | Police Officer's Notebook | Upheld |
| 31 | 210 | Part | Computer Printout | Upheld |
| 32 | 211 | Part | Record of Arrest of Appellant | Disclosure according to highlighted copy |
| 33 | 213-214 | Part | Supplementary Record of Arrest of Appellant | Disclosure according to highlighted copy |
| 34 | 217 | Total | Facsimile Cover Page | Upheld |
| 35 | 219 | Part | Computer Printout | Upheld |
| 36 | 221 | Part | Duplicate of page 211 | Upheld |
| 37 | 223-224 | Part | Duplicate of page 213-214 | Disclosure according to highlighted copy |
| 38 | 234-256 | Total | Appellant's Appeal Hearing dated July 17, 1992 | Upheld |