



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-393

Appeal M-9300535

Ottawa 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 requester sought access to all records containing his own personal information from the Ottawa Police Services Board (the Police). The Police provided the requester with complete access to three general occurrence reports and partial access to four others. The requester appealed the decision of the Police and also maintained that more records responsive to his request should exist.

During mediation of the appeal, the appellant narrowed the scope of the appeal with respect of one of the four remaining reports, Record 20, to those portions containing the names and addresses of witnesses.

A Notice of Inquiry was provided to the appellant, the Police and the two witnesses. Representations were received from the Police and the appellant.

The records which remain at issue in this appeal consist of those portions of the four general occurrence reports which the Police have not disclosed to the appellant.

The Police rely on the following exemptions to withhold this information:

- invasion of privacy - section 38(b)
- facilitate commission of unlawful act - section 8(1)(l)
- discretion to refuse requester's own information - section 38(a)

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 one word withheld from the last paragraph on page 6 of Record 17, the personal information is about the appellant **and** other individuals. The information contained in the last paragraph on page 6 which was not disclosed relates solely 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 Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

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 Police 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.

In their representations, the Police state that all of the information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)). The Police further submit that the release of personal information would represent a presumed unjustified invasion of the personal privacy of other individuals referred to in the records.

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

- (1) All of the information at issue in the records was compiled and is identifiable as part of an investigation into a possible violation of law. The purpose of the investigations which resulted in the creation of the records was to determine if the actions of any of the persons involved warranted the laying of criminal charges. Accordingly, the presumed unjustified invasion of personal privacy in section 14(3)(b) applies.
- (2) Section 14(4) does not apply to the information, and the appellant has not claimed that section 16 of the Act applies in this appeal.
- (3) Therefore, I find that disclosure of the personal information about the appellant and other individuals would constitute an unjustified invasion of the personal privacy of those other individuals and is properly exempt from disclosure under section 38(b) of the Act.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

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.

The Police submit that the one word withheld from the last paragraph on page 6 of Record 17 qualifies for exemption under section 8(1)(l), which states:

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

facilitate the commission of an unlawful act or hamper the control of crime.

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The portion of the record for which the Police have claimed the exemption provided in section 8(1)(l) consists of a message code (sometimes referred to as a "ten-code") used by police officers in their communications with one another.

The Police have submitted that these message codes are used by police sources as a way of efficiently communicating with each other in a fashion which, if intercepted, would not permit non-police personnel to determine the content or importance of the communication. The representations of the Police point out that the meaning of the message codes, if disclosed, could place police officers in potentially dangerous situations or could facilitate the commission of unlawful acts.

In the circumstances of this appeal, I am satisfied that the Police have demonstrated a clear and direct linkage between disclosure of the particular code in the subject record and the types of harm described in section 8(1)(l) of the Act. Accordingly, this personal information of the appellant is properly exempt from disclosure under section 38(a) of the Act.

REASONABLENESS OF SEARCH

At the outset of the appeal, the appellant indicated that he believed that the Police had custody of further records containing his personal information.

Where the requester provides sufficient details about the records which he is seeking and the Police indicate that additional records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge their obligations under the Act, the Police must provide me with sufficient evidence which shows that they have made a **reasonable** effort to identify and locate records responsive to the request.

In their representations the Police provided evidence of the steps taken and searches they conducted to locate records responsive to the appellant's request. They have also provided copies of their records retention by-laws governing the files they searched. I have reviewed this evidence and I am satisfied that the Police have taken all reasonable steps to locate any records responsive to the appellant's request.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Anita Fineberg
Inquiry Officer

_____ September 21, 1994