



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-397

Appeal M-9400311

Thunder Bay 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). It was filed by the authorized agent of the appellant. The appellant has requested from the Thunder Bay Police Services Board (the Police) information related to an investigation of an incident in which he was allegedly involved. The Police located records responsive to the request and denied access in part, relying on the following exemptions:

- invasion of privacy - sections 14(1) and 38(b)
- confiscated record - section 8(1)(h)
- facilitate commission of unlawful act - section 8(1)(l)
- law enforcement - section 8(2)(a)

A Notice of Inquiry was provided to the parties to the appeal, namely the appellant, the Police and seven individuals (the affected persons) whose interests could be affected by the disclosure of the records. Representations were received from the appellant, the Police and four of the affected persons.

The records consist of a general occurrence report, supplementary reports, witness statements, a search warrant with supporting information and professional notes. They are numbered as Pages 1-12, 16-21 and 28-44 according to the system used by the Police. Some of these records were withheld in their entirety, while others were withheld only in part.

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 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 carefully reviewed all the pages at issue in this appeal to determine if they contain "personal information" and, if so, to whom the personal information relates. I have made the following findings on this issue:

- (1) Pages 1, 2, 5-12, 16-21 and 28-44 contain the personal information of the appellant **and** other individuals;
- (2) Those portions of Pages 3 and 4 that have not been disclosed contain no personal information.

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.

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.

The Police submit that the presumptions contained in sections 14(3)(a) (medical history) and 14(3)(b) (information compiled and identifiable as part of an investigation into a possible violation of law) apply to the personal information at issue. Therefore, the Police submit that the release of the personal information would represent a presumed unjustified invasion of personal privacy of individuals other than the appellant. They also claim that this information is highly sensitive (section 14(2)(f)), a factor that weighs in favour of privacy protection.

Three of those affected persons who provided representations support the position of the Police that the information should not be released as it is highly sensitive. They also maintain that their privacy interests should be protected as disclosure of the information will expose them unfairly to harm (section 14(2)(e)) and maintain that the information was provided in confidence (section 14(2)(h)).

The submissions of the appellant and those of the affected person who supports disclosure do not specifically refer to any factors in section 14(2) of the Act. However, I believe they may be characterized as claiming that disclosure is desirable for subjecting the activities of the Police to public scrutiny (section 14(2)(a)) and that the personal information is relevant to a fair determination of the rights of the appellant (section 14(2)(d)).

The representations also call into question the conduct of various organizations and/or individuals who were involved in this incident. However, this order can only address whether the Police properly withheld certain information from the appellant. I note that the appellant has approached other agencies to review the conduct of those individuals and/or groups whose actions he has questioned.

Previous orders of this agency have determined that investigations of alleged violations of the Criminal Code qualify as investigations into a possible violation of law for the purposes of section 14(3)(b) (Orders M-6, M-198 and M-317). These orders have also established that section 14(3)(b) only requires that there be an investigation into a **possible violation** of law; the fact that criminal charges were withdrawn by the

Police does not negate the applicability of this section. I agree with these determinations and adopt them for the purposes of this appeal.

Having reviewed the representations of the parties and the records, I have made the following findings with respect to all of those pages which contain both the personal information of the appellant **and** other individuals:

- (1) The personal information contained in the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law, namely, the Criminal Code. Accordingly, the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act.
- (2) None of this information falls within the ambit of section 14(4). Nor has the appellant submitted that section 16 of the Act applies to this personal information.
- (3) None of the submissions provided by the appellant to support disclosure in this case are sufficient to rebut the presumption in section 14(3)(b) (Order M-170).
- (4) Accordingly, the exemption in section 38(b) applies to the personal information found in portions of Pages 1, 2, 5-12 and 44 at issue and to Pages 16-21 and 28-43 in their entirety.

The Police claim that section 8(1)(h) of the Act applies to Pages 10, 12 and 28-43. Because I have decided that disclosure of these pages would result in an unjustified invasion of privacy, I need not consider whether their disclosure would reveal a record which has been confiscated.

FACILITATE COMMISSION OF UNLAWFUL ACT

The information remaining at issue in this appeal consists of what the Police describe as "Police codes". These are numbers found on Pages 1-5, 7-12 and 44. The Police submit that section 8(1)(l) of the Act applies to exempt this information.

This section of the Act 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.

The Police have submitted no evidence to explain how disclosure of these codes could reasonably be expected to facilitate the commission of an unlawful act. They have provided no information to show a clear and direct linkage between disclosure of this information and the harms described in section 8(1)(l) of the Act. As this was the only exemption applied to Pages 3 and 4, these pages should be disclosed to the appellant in their entirety.

LAW ENFORCEMENT

The Police also claim that Pages 1, 2, 5, 7-12 and 44 constitute "law enforcement" reports. I will now consider whether this exemption applies to the information remaining at issue on these pages, namely the codes.

Section 8(2)(a) of the Act reads as follows:

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;

For a record to qualify for exemption under section 8(2)(a), the institution 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.

The word "report" is not defined in the Act. However, previous orders have established that in order to qualify as 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.

The pages containing the Police codes are entitled "General Occurrence Report" and "Supplementary Report". They consist of narratives prepared by the officers recounting their actions in the investigation of the offence allegedly committed by the appellant. In my view, these documents do not constitute "reports" for the purposes of the Act as they are solely recordings of fact.

Accordingly, I find that the section 8(2)(a) exemption has not been satisfied. Thus, the Police codes on Pages 1, 2, 5, 7-12 and 44 should be disclosed to the appellant.

ORDER:

1. I uphold the decision of the Police not to disclose the personal information contained in Pages 1, 2, 5-12, 16-21 and 28-44.
2. I order the Police to disclose to the appellant Pages 3 and 4 in their entirety and those portions of Pages 1, 2, 5, 7-12 and 44 containing "Police codes" within twenty-one (21) days of the date of this order.
3. 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 2.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ October 4, 1994