Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-451

Appeal M-9400408

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 Metropolitan Toronto Police Services Board (the Police) received a request for access to "records for 31 Division and all Metro" with respect to the requester.

The Police identified 70 records as responsive to the request and granted the requester access to 18 records. The Police relied on the following exemptions to deny access to one record in full and to parts of the remaining 51 records:

- law enforcement - sections 8(1)(c) and (l)
- invasion of privacy - sections 14(1) and 38(b)

The Police also indicated that certain portions of the records were not disclosed as they are not responsive to the request.

The requester appealed the decision of the Police, and a Notice of Inquiry was provided to the Police and the requester. Representations were received from both parties.

PRELIMINARY ISSUE:

RECORDS NOT RESPONSIVE TO THE REQUEST

The Police indicate that a number of records or parts of records which have been withheld from the appellant do not contain information responsive to the request. Although the Notice of Inquiry requested submissions from both parties on this issue, neither party addressed it in their representations. I have reviewed these records and, with the exception of Record 36 and part of Record 23 which, in my view, contain responsive information, I agree that the records or parts of records identified by the Police do not contain any information which is responsive to the request. Therefore, this information falls outside the scope of this appeal.

DISCUSSION:

LAW ENFORCEMENT

The Police claim that sections 8(1)(c) and (l) apply to the information exempted from Records 7, 14 and 66. These sections read:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (c) reveal investigative techniques and procedures currently in use of likely to be used in law enforcement;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

The Police submit that the portions of the records to which these sections have been applied would encourage and enable a person to avoid apprehension.

In order to constitute an "investigative technique or procedure" for the purposes of section 8(1)(c), it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective use. The fact that the particular technique or procedure is generally known to the public would normally lead to the conclusion that disclosure would not compromise its effective use and, accordingly, that section 8(1)(c) would not apply (Order 170).

I have reviewed the records and I am not satisfied that the disclosure of the information which has been withheld would hinder or compromise its effective use. Additionally, I am not satisfied that disclosure of this information would facilitate the commission of an unlawful act or hamper the control of crime. Accordingly, I find that the records do not qualify for exemption under sections 8(1)(c) or (l). As no other exemptions have been claimed for these records, they should be disclosed to the appellant.

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. The Police submit that the records contain the personal information of the appellant and other individuals. I agree. However, certain information which the Police have severed from the records does not relate to another **identifiable** individual. This information does not qualify as personal information of any other individual and, therefore, cannot be exempted from disclosure pursuant to section 38(b). As no other exemptions have been claimed for this information and no mandatory exemptions apply, it should be disclosed to the appellant.

The Police have applied both section 14(1) and section 38(b) to withhold information from the appellant. Although it is not entirely clear where section 14(1) as opposed to section 38(b) has been used, it does appear that the exemptions have been applied to withhold different information from the same records. It seems that where the severed information is a name or a few words which on their own relate solely to individuals other than the appellant the Police have applied section 14(1), and section 38(b) was applied where the personal information of the appellant and other individuals is intertwined.

Both section 14(1) and section 38(b) are designed to protect personal privacy, but the two sections are very different: section 14(1) prohibits disclosure of personal information (except in certain circumstances), while section 38(b) recognizes the right of the individual to obtain access to information about him or herself by introducing a balancing principle, requiring the Police to weigh the requester's right of access to his or her personal information against the rights of other individuals to the protection of their personal privacy.

The records which are the subject of this appeal have been identified as responsive to the request by the Police because they contain information which relates to the appellant. In my view, it is both unfair to the

appellant and impractical to consider various parts of the same record under these two very different exemptions. Where the records in which the information appears also contain the personal information of the appellant, a number of previous orders have uniformly come to the conclusion that section 14(1) of the Act is not available to exempt this information from disclosure, and the appropriate consideration of each severance to the records involves section 38(b) (Order M-352). I agree, and will consider these records under section 38(b) only.

A complex privacy problem arises when one individual seeks access to records which contain information about him or herself and another individual. Under section 38(b) of the Act, the Police have the discretion to deny the requester access to personal information of other individuals. The exemption speaks of an unjustified invasion of personal privacy. Therefore, to simply exempt from access all records or parts thereof which contain personal information relating to another individual is not satisfactory. While the privacy interest in one's personal information is important, it must yield on occasion to the individual's right to access information about him or herself.

A number of previous orders (Order M-384) have held that the disclosure of personal information relating to an individual other than the requester, in circumstances where the person requesting the information had originally provided it to the government organization, would not result in an unjustified invasion of personal privacy. I agree, and I find that disclosure of the information which was provided to the Police by the appellant would not constitute an unjustified invasion of personal privacy of any other individual. Accordingly, the exemption in section 38(b) does not apply to it.

In my view, this is sufficient to dispose of the issue of the appellant's access to the personal information of others which he provided to the Police. However, the Police have raised the possible application of the presumption in section 14(3)(b) to the same information. To address the concerns of the Police, I will include a discussion of this information in my discussion of the application of section 14(3)(b) of the Act.

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. The Police submit that the following presumptions from section 14(3) apply:

- the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation (section 14(3)(a))
- the personal information was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b))
- the personal information relates to employment or education history (section 14(3)(d)).

The Police indicate that section 14(3)(a) was applied to parts of the records which describe the injuries received by the victim of an assault and state that such information relates to a medical condition/evaluation. In each case, however, the information amounts to an observation recorded by a police officer, not a medical professional and, in my view, does not attract the application of the presumption.

The Police submit that section 14(3)(d) applies to police officers' employment dates and periods of absence, submitting that such information constitutes employment history. In my view, the information relating to the police officers' periods of absence does not constitute employment history for the purposes of section 14(3)(d), and the presumption does not apply. However, disclosure of the date on which each police officer commenced employment would constitute a presumed unjustified invasion of personal privacy, and section 14(3)(d) applies.

The Police submit that the personal information of the appellant and the other individuals involved in the occurrences was collected solely for the purpose of a law enforcement investigation and, therefore, section 14(3)(b) applies. The Police argue that whether the appellant already knows the contents of portions of these records and whether he in fact provided the information does not alter the fact that the records reveal another individual's personal information gathered during an investigation into a law enforcement matter. The Police acknowledge that the appellant himself provided some of the information, but submit that the Act does not mandate any restrictions or use of the information once it is disclosed and this is tantamount to releasing the records into the public domain. However, when addressing the request under Part III of the Act, it is disclosure to the appellant which is relevant, not disclosure to the world.

In Order M-444, Inquiry Officer John Higgins considered a similar situation and found that non-disclosure of the information which the appellant in that case provided to the Police in the first place would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. In this case, as in that considered by Inquiry Officer Higgins, applying the presumption to deny access to the information which the appellant himself provided to the Police would, according to the rules of statutory interpretation, be labelled an absurd result. On this basis, I find that the presumption in section 14(3)(b) does not apply to this information. Having considered the factors listed in section 14(2) and all of the circumstances of this appeal, I find that disclosure of this information would not constitute an unjustified invasion of personal privacy, and section 38(b) does not apply.

The personal information which remains, with the exception of the periods of absence of the police officers, was compiled and is identifiable as part of an investigation into a possible violation of law and I am satisfied that the presumption found in section 14(3)(b) applies. I have highlighted this information on the copy of the records provided to the Police with a copy of this order, and it is not to be disclosed.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption.

I have considered section 14(4) of the Act and find that none of the personal information at issue in this appeal falls within the ambit of this provision. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies.

With respect to the periods of absence of the police officers, having considered all of the circumstances of this appeal and balanced the competing access and privacy rights recognized by section 38(b), I find that disclosure of this information to the appellant would constitute an unjustified invasion of personal privacy of the police officers, and section 38(b) applies.

Accordingly, I find that only the information which I have highlighted on the copy of the records forwarded to the Police is exempt under section 38(b) of the Act.

ORDER:

1. I order the Police to disclose to the appellant those portions of the records which are **not** highlighted on the copy of the records which have been provided to the Freedom of Information and Privacy Co-ordinator of the Police with a copy of this order within fifteen (15) days of the date of this order.

2. I uphold the decision of the Police not to disclose those portions of the records which **are** highlighted on the above-mentioned copy of the records.

3. In order to verify compliance with the provisions of 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: January 30, 1995
Holly Big Canoe
Inquiry Officer