



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

# **ORDER M-554**

**Appeal M-9500147**

**Barrie 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 Barrie Police Services Board (the Police) received a request for access to the summary page of the telephone bills for all cellular phones used by the Police during the month of September 1994. The Police located records responsive to the request and granted access to them in their entirety with the exception of the cellular telephone number and the name of the user, claiming the application of the following exemptions contained in the Act:

- endanger life or safety - section 8(1)(e),
- facilitate the commission of an unlawful act or hamper control of crime - section 8(1)(l).

The requester appealed the decision to deny access to the undisclosed information and raised an objection about the sufficiency of the decision letter. The appellant's concerns about the decision letter were resolved during the mediation of the appeal.

A Notice of Inquiry was forwarded to the Police and the appellant. Prior to the submission of their representations, the Police advised the Appeals Officer that they also intended to claim the application of section 11(d) to the undisclosed information. A Supplementary Notice of Inquiry was forwarded to the parties seeking their submissions on the application of section 11(d) and the appropriateness of the late raising of this discretionary exemption by the Police. Representations were received from both parties. Additional representations were sought but not received from the appellant on the impact of a recent decision of the Divisional Court which appears to have changed the evidentiary burden placed on institutions in an appeal. I will address the implications of the Divisional Court's decision below.

## **DISCUSSION:**

### **PRELIMINARY ISSUE**

The appellant has objected to the application by the Police of section 11(d) to the undisclosed information on the basis that it was raised by the Police after the 35 day period allowed by this agency for the raising of any new discretionary exemptions. It should be noted that the Police first raised the possible application of section 11(d) 39 days after the Confirmation of Appeal was sent to the parties by this office.

The decision to claim section 11(d) was made immediately following the appointment of a new Freedom of Information and Privacy Co-ordinator by the Police. I find that, in the circumstances of this appeal, an extension of four days for the raising of an exemption is not unreasonable.

### **ENDANGER LIFE OR SAFETY/FACILITATE COMMISSION OF UNLAWFUL ACT**

Sections 8(1)(e) and (l) of the Act provide:

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

- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

The Police have described in detail the manner in which the cellular telephones have been put to use by the Criminal Investigations Branch, Patrol Supervisors and the Chief of Police. They explain how the telephones are used solely for emergency purposes or when, for confidentiality reasons, radio transmissions cannot be passed. The Police submit that the public disclosure of these telephone numbers could unnecessarily tie the lines up as the public would use them in the same manner as the listed Police telephone numbers. This could, in their submission, endanger the safety of Police officers and the public as important information may not be passed to the appropriate person promptly and efficiently. In addition, the Police submit that they could be hampered in their ability to control crime if their communications systems, particularly the use of cellular telephones, were compromised.

The appellant quotes at length from Order P-534 in which Inquiry Officer Anita Fineberg found that certain records relating to the funding of the Project 80 investigation were not exempt from disclosure under sections 14(1)(a), (b), (d) or (f) of the provincial Act, which are equivalent to sections 8(1)(a), (b), (d) and (f) of the municipal Act. He submits that the Police are required to demonstrate a "clear and direct linkage" between the disclosure of the information and the harm alleged by the Police. Further, the appellant argues that there must exist a reasonable expectation that the harm alleged will probably, not possibly, occur.

On a plain reading of sections 8(1)(e) and (l), the Police must demonstrate that the harms enumerated in those sections could reasonably be expected to result from the disclosure of the information.

The Police have submitted that these types of communication equipment are important tools in the investigation and prevention of crime and that if they become less available due to telephone lines being tied up with calls from the public, their ability to prevent and investigate crime could be hampered. I am satisfied that the Police have supplied sufficient evidence to demonstrate that the disclosure of the cellular telephone numbers and the names of those who use them could reasonably be expected to hamper the control of crime. I find, therefore, that the information is exempt under section 8(1)(l).

Because of the manner in which I have addressed the application of section 8(1)(l) to the information at issue, it is not necessary for me to address sections 8(1)(e) and 11(d).

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_ July 6, 1995  
Donald Hale  
Inquiry Officer