



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

ORDER M-646

Appeal M_9500511

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 any and all documents which were generated as a result of the investigation of an alleged assault upon the requester which occurred on June 22, 1995. The request was submitted by counsel on behalf of the requester. The Police identified 88 pages of responsive records, consisting of arrest records, supplementary records, police officers' notebooks, internal memorandums, a witness list, witness statements and other internal administrative documents covering the time period of June 22, 1995 to June 26, 1995. The Police denied access to all records, claiming the following exemptions contained in the Act:

- law enforcement - section 8(1)(a)
- right to fair trial - section 8(1)(f)
- discretion to refuse requester's own information - section 38(a)

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

Because some of the records appeared to contain the personal information of the appellant and other identifiable individuals, the Notice of Inquiry raised the possible application of section 38(b) of the Act (invasion of privacy).

DISCUSSION:

PERSONAL INFORMATION

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 contained in the records, and I find that all of it satisfies the definition of personal information. In my view, the personal information contained in pages 3-4, 6, 11-14, 17-19, 21, 31-32, 34, 37, 39, 52-56, 69-72, 74-77, 81-82 and 84-86 (the Group 1 pages) is that of both the appellant and other identifiable individuals, and the personal information contained in pages 1-2, 5, 7-10, 14A, 15, 15A, 16, 20, 22-30, 33, 35-36, 38, 40-51, 57-68, 73, 78-80 and 83 (the Group 2 pages) is that of individuals other than the appellant.

LAW ENFORCEMENT AND DISCRETION TO REFUSE REQUESTER'S OWN 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(a) of the Act, the Police have the discretion to deny access to records which contain an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 38(a) include the law enforcement exemptions claimed with respect to the records at issue in this appeal (sections 8(1)(a) and (f)).

In the discussion which follows, I will consider whether the Group 1 pages qualify for exemption under sections 8(1)(a) and (f) as a preliminary step in determining whether the exemption in section 38(a) applies. As far as the Group 2 pages are concerned, because they do not contain the personal information of the appellant, section 38(a) does not apply, and I will simply consider whether they qualify for exemption under sections 8(1)(a) and (f).

LAW ENFORCEMENT/RIGHT TO FAIR TRIAL

Sections 8(1)(a) and (f) of the Act provide:

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

- (a) interfere with a law enforcement matter;
- (f) deprive a person of the right to a fair trial or impartial adjudication;

The Police claim these exemptions apply to all pages of the records.

In order for a record to qualify for exemption under section 8(1)(a), the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act. Clearly, an investigation by the Police regarding an allegation of assault (an offence under the Criminal Code) satisfies the definition of a law enforcement investigation.

The purpose of the exemptions contained in section 8(1) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to result in one of the harms set out in this section. The Police bear the onus of providing sufficient evidence to establish the reasonableness of the expected harm. The Police state that charges under the Criminal Code have been laid against the accused persons and are scheduled to be heard in Ontario Court (Provincial Division) in January 1996. They submit that disclosure of the records prior to the trial could jeopardize the Crown's mandate and the rights of the individuals who have been charged in this criminal matter. The Police further submit that premature disclosure could either intentionally or inadvertently cause an obstruction of justice.

Having carefully reviewed the records and the representations of the Police, I find that I have been provided with sufficient evidence to establish that disclosure of pages 1-10, 14A-86, and the bottom 6 lines of page 14 of the records could reasonably be expected to interfere with an ongoing law enforcement matter and, therefore qualify for exemption under section 8(1)(a) of the Act.

As far as pages 11, 12, 13 and the remaining portion of page 14 are concerned, they represent the appellant's victim statement that he provided to the Police at the time of the incident. I am not convinced that providing the appellant with access to his own statement could reasonably be expected to interfere with an ongoing law enforcement matter (section 8(1)(a)) and/or an individual's right to a fair trial (section 8(1)(f)), and I find that the Police have not provided me with sufficient evidence to demonstrate that there exists a reasonable expectation that the harms envisioned by sections 8(1)(a) and/or (f) would occur should this information be disclosed.

In summary, then, I find that all of the Group 2 pages satisfy the requirements for exemption under section 8(1)(a) of the Act. As far as the Group 1 pages are concerned, I find that all pages, with the exception of the top six lines of page 14, and all of pages 11, 12 and 13, also meet the requirements of the section 8(1)(a) exemption claim. As noted above, section 38(a) provides an exemption for records containing a requester's own personal information where certain other exemptions (including section 8) would otherwise apply. Because I have found that these Group 1 pages qualify for exemption under section 8(1)(a), I also find that they are properly exempt under section 38(a) of the Act.

INVASION OF PRIVACY

The only information that remains at issue is the appellant's victim statement contained on pages 11-14 of the records, which I have previously found contains the personal information of both the appellant and other identifiable individuals.

Under section 38(b) of the Act, where a record contains the personal information of both a requester and another individual, 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.

In the circumstances of this appeal, the Police did not raise section 38(b), and specifically declined to address the potential application of this exemption in their response to the Notice of Inquiry. I conclude that the Police reviewed the contents of these pages and decided it was not appropriate to raise this discretionary exemption in the circumstances of this appeal.

After carefully reviewing these pages myself, I too feel that section 38(b) is not applicable in the circumstances of this appeal. One of the primary purposes of the Act, as outlined in section 1(b) is to provide individuals with a right of access to their own personal information. Part II of the Act also identifies limits to this right of access, but, in my view, it is incumbent on institutions to clearly establish the existence of one or more of these limitations in the circumstances of an individual appeal before denying access.

Inquiry Officer Laurel Cropley (Order M-384) and Inquiry Officer John Higgins (Order M-444) both dealt with appeals also involving the Metropolitan Toronto Police Services Board which included records containing information provided to the Police by a requester. In both of these appeals, the Inquiry Officers found that disclosure of personal information recorded by a police officer which related to someone other than the requester, but which was provided to the investigating officer by the requester, would not be an unjustified invasion of the personal privacy of these other individuals. I agree with these findings. In my view, even if the Police had claimed section 38(b), to deny the appellant access to his own victim statement in the circumstances of this appeal would be inconsistent with the legislative intent of section 38(b) and could not be supported.

ORDER:

1. I uphold the decision of the Police not to disclose pages 1-10, 14A-86 and the bottom six lines of page 14 of the records.
2. I order the Police to disclose the remaining portions of page 14, and pages 11, 12 and 13 in their entirety to the appellant within thirty-five (35) days of the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
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 pages of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____ November 15, 1995
Tom Mitchinson
Assistant Commissioner