



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

ORDER M-628

Appeal M_9500111

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 from a police officer for access to his personal information. The requester stated that this information related to a claim made to the Police for legal indemnity for costs he incurred through law suits as a result of a 1993 incident.

The Police located a large number of records. Access was granted in full to many of the records. Access was denied in part or in full to the remainder. The Police denied access under the following sections of the Act:

- closed meeting - section 6(1)(b)
- advice or recommendations - section 7(1)
- third party information - section 10(1)(d)
- solicitor-client privilege - section 12
- invasion of privacy - section 38(b)

The Police also indicated that access to parts of the record were denied as they were not responsive to the request. The requester appealed the denial of access.

During mediation, the appellant reduced the number of records at issue, and indicated that he was not seeking the personal identifiers of other individuals (i.e. name, address, telephone number, etc.) which appear in the records. The Police, in mediation, disclosed three additional records to the appellant. Further mediation was not possible. The remaining records at issue are listed in Appendix "A".

A Notice of Inquiry was provided to the Police and the appellant. In this Notice, the Appeals Officer noted that as the information contained in certain records appeared to include the personal information of both the appellant and others, sections 14 and 38 may have application in this case. Representations were received from both parties.

PRELIMINARY ISSUE:

RESPONSIVENESS OF RECORDS

The Police have not disclosed some portions of Records 206, 209 and 210 on the basis that they are not responsive to the request.

Section 4(1) of the Act states:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or part falls within one of the exemptions under sections 6 to 15.

In my view, it is significant that section 4(1) refers to access to a "record or a part of a record". On this basis, I read section 4 as permitting government organizations to disclose "part of a record" if only part contains responsive information.

The appellant's request states specifically, "... all records relating to [myself] in relation to the Labour Relations Unit." The information which the Police claim is non-responsive is a file number assigned by the Labour Relations Unit to the appellant's file. I do not agree with the Police's determination that these parts of the records are non-responsive.

As the Police have withdrawn their claim for all other exemptions for these portions of the records, I order these portions of the records be disclosed to the appellant.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The Police claim that the information contained in the records consists of the personal information of the appellant and others. They claim that as information other than the personal information of the appellant is involved, to disclose it would be an unjustified invasion of other individuals' privacy.

I have reviewed the records at issue and agree that they contain the personal information of both the appellant and other individuals.

During mediation, the appellant agreed to have personal identifiers severed from the records at issue. The personal identifiers were severed by the Appeals Officer and forwarded to the Police with the Notice of Inquiry. The Police were asked to comment on these severances with respect to the invasion of privacy issue. I see nothing in the representations to indicate that these severances were unacceptable or inappropriate. I have also reviewed them and am satisfied that the personal identifiers of individuals other than the appellant have been severed and, therefore, I will consider these parts of the records no longer to be at issue.

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. 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 have indicated that in denying access under section 38(b), they considered the factors listed in both 14(2) and (3) and found section 14(3)(b) to be relevant.

Section 14(3)(b) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent disclosure is necessary to prosecute the violation or to continue the investigation.

The appellant has requested his file pertaining to his claim for legal indemnity. It is reasonable to assume that in such a file there would be information with respect to the circumstances which require a legal defence - which could include possible violations of law.

The Police have provided no evidence, however, to suggest that the information in the records which relate to law enforcement matters **are part of** the investigation into a possible violation of law. I accept that the records detail events in which there was a violation of law, however, there is no evidence before me to indicate that this information, as it appears in the records at issue in this appeal, is identifiable as part of an investigation into a possible violation of law.

I have reviewed the records and the relevant sections of the Act. With the personal identifiers removed, I can find no factors weighing in favour of non-disclosure. I have also considered the fact that the information detailed in many of these records was available in open court, during the prosecution of the violations of law. As the appellant was himself involved in these incidents, he is well aware of the information.

Upon balancing the rights of the other individuals to privacy and the appellant's right to access his own personal information, I find that disclosure of this personal information is not an unjustified invasion of privacy, and thus, section 38(b) has no application.

SOLICITOR-CLIENT PRIVILEGE

The Police claim that Records 52, 53, 75, 117, 204, 205, 208, 211, 212 and 220 qualify for exemption under section 12. This section consists of two branches, which provide a head with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege; (Branch 1) and
2. a record which was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the institution must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication, **and**
(b) the communication must be of a confidential nature, **and**
(c) the communication must be between a client (or his agent) and a legal advisor, **and**
(d) the communication must be directly related to seeking, formulating or giving legal advice;

OR

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

A record can be exempt under Branch 2 of section 12 regardless of whether the common law criteria relating to Branch 1 are satisfied. Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

1. the record must have been prepared by or for counsel employed or retained by an institution; **and**
2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

Records 52 and 53 are a two-page letter from an insurance adjuster for the Municipality of Metropolitan Toronto to the Executive Director of the Police Services Board. This communication is not between legal advisor and client, nor was it prepared by or for counsel employed or retained by an institution. I find the exemption does not apply to these records.

Record 75 is a written communication, noted as confidential, from a legal advisor to his client. However, I cannot agree that the contents of this communication are directly related to seeking, formulating or giving **legal advice**, nor was it prepared for use in giving legal advice or in contemplation or for use in litigation. I find that section 12 does not apply to this record.

Record 117 appears to be a standard form. There is no indication as to its author, nor to its addressee. There are no indicators that this is a confidential form nor that it is prepared by or for a solicitor. I find that section 12 has no application to this record.

Record 204 is a communication between two solicitors. I find that it is not confidential in nature, is not between a client and his counsel, nor does it discuss legal advice. The record was not

prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation. I find that section 12 does not exempt this record.

Record 205 is a communication marked confidential and is a communication between a solicitor and client. In this communication, the solicitor is offering legal advice. I find this record to be exempt under Branch 1 of section 12.

Records 208, 211 and 212 are communications between lawyers and parties who are adverse in interest to their clients, and Record 220 is a letter from an arbitrator to parties to an arbitration. These are not confidential communications between a solicitor and client, and were not prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation. Thus, section 12 has no application to these records.

CLOSED MEETING

The Police submit that Records 33, 44-48, 166-169 and 170 qualify for exemption under section 6(1)(b). To qualify for exemption under section 6(1)(b), the Police must establish that:

1. a meeting of a council, board, commission, or other body or a committee of one of them took place; **and**
2. that a statute authorizes the holding of this meeting in the absence of the public; **and**
3. that disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

[Order M-64]

I accept the Police Services Board's assertion that the Police Services Act authorizes the Police Services Board to hold meetings in the absence of the public and that they did, in fact, meet in camera on two occasions: December 17, 1992 and August 19, 1993. Thus, in all cases, parts one and two of this three-part test are met.

Turning to the third requirement, the Police submit these documents "... pertain to confidential meetings and to correspondence relative to in camera meetings ...".

In order to address the third part of the test, it is necessary to define the term "deliberations". Deliberations, in the context of section 6(1)(b), refer to discussions which were conducted with a view towards making a decision (Order M-184). If disclosure of a document would reveal the actual substance of the discussions conducted by the Police Services Board, hence its deliberations, or would permit the drawing of accurate inferences about the substance of those discussions, it meets the criteria for the third part of the test.

Additionally, although the information contained in the records may have been the **subject** of deliberations by the Police Services Board, if the records themselves do not contain information

which would reveal the **substance** of those deliberations, they do not meet the criteria for the third part of the test (Order M-98).

Record 33 is neither written by nor addressed to a member of the Police Services Board and post dates both in camera meetings. Record 44 is titled "Minutes of a Closed Meeting" and is dated August 19, 1993. The decisions reached by the Police Services Board and the basis for the decisions are included in these records, but the actual substance of the discussions conducted by the Police Services Board is not. I find that section 6 has no application to these records.

I find that Records 45, 46-48 and 166-169 (with the exception of the last part of Record 169) do not reveal "deliberations" as defined above, but rather provide the subject of the discussion and background to discussions. Therefore they do not qualify for exemption. The part of Record 169 which begins with "The Board" through to the end of the page would reveal the actual substance of the deliberations, and qualifies for exemption under section 6(1)(b).

Record 170 refers simply to the subject of an item discussed at a Police Services Board meeting and in no way refers to their deliberations. I find this record does not qualify under section 6 for exemption.

ADVICE OR RECOMMENDATIONS

The Police claim that records 49-51, 168, 169, 171 and 173 are exempt from disclosure pursuant to section 7(1) of the Act.

Section 7(1) states that:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

Records 168 and 169 are duplicates of Records 50 and 51. Having reviewed the records, I find that only the "Recommendations" section of Record 49 and the "Discussion" sections of Records 50, 51, 168 and 169 contain advice and a recommended course of action from an employee of the Police Services Board. The "Background" sections of these records contain factual information, not advice or recommendations and, therefore, do not qualify for exemption under section 7(1) of the Act.

With respect to Records 171 and 172, the advice and recommendations offered in Records 50, 51, 168 and 169 is paraphrased in the "Metropolitan Toronto Legal Department" section of Record 172. Accordingly, the information contained in this section of the record qualifies for

exemption under section 7(1), as its disclosure would reveal what I have found to qualify as advice and recommendations previously in this order. Additionally, I find that the last two paragraphs in the "Issues" section of Record 172 also contain a suggested course of action, and this section qualifies for exemption under section 7(1) as well. In my view, the remaining portions of these records do not contain advice or recommendations, and section 7(1) does not apply.

Records 173 and 174 are a memo which simply relays information. It makes no recommendation as to a course of action, nor does it offer advice. I find, therefore, that these records do not qualify for exemption under section 7(1) of the Act.

THIRD PARTY INFORMATION

The Police claim that Records 46-48, 77, 175, 176, 176A, 195, 196, 198, 211, 212, 217, 220 and 221 are exempt pursuant to the exemption in section 10(1)(d). This section states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

I have carefully reviewed these records. Aside from Record 220, none of the records was written by a person appointed to resolve a labour relations dispute. Accordingly, none of these records can be the report of such a person. Further, I have been provided with no evidence which would suggest that the information contained in these records was supplied to a person appointed to resolve a labour relations dispute, and I find that section 10(1)(d) does not apply.

Record 220 was written by a person appointed to resolve a labour relations dispute, within the meaning of section 10(1)(d). However, this record is not a report, and the information contained in this record is not labour relations information. It is simply confirmation of a meeting date, place and time. This is not the type of information this exemption was designed to protect, and I find that section 10(1)(d) does not apply.

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 exemptions listed in section 38(a) include the exemptions claimed with respect to the records at issue.

I have previously found that the records contain the personal information of the appellant. Having found that the "Recommendations" section of Record 49 and the "Discussion" sections of Records 50, 51, 168 and 169, the "Metropolitan Toronto Legal Department" section of Record 172, and the last two paragraphs in the "Issues" section of Record 172 qualify for exemption

under section 7(1), and Record 205 qualifies for exemption under section 12, I find that these parts of the records are exempt under section 38(a).

SECTION 43(2)

It has not escaped my attention that, for the most part, Records 167-169 duplicate Records 49-51. I have found that parts of Records 49-51 qualify for exemption under section 7(1) and are, therefore, exempt from disclosure under section 38(a). I have not upheld an exemption claim for the corresponding parts of Records 167-169, because the Police did not claim the application of section 7(1) in respect of these records.

Section 43(2) of the Act reads:

If the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part.

This section requires that, despite the absence of such a claim in the decision letter and representations of the Police, I uphold the decision of the Police not to disclose the parts of Records 167-169 which duplicate the parts of Records 49-51 which I have found to be exempt.

ORDER:

1. I uphold the decision of the Police not to disclose the "Recommendations" section of Records 49 and 167, the part of Record 169 which begins with "The Board" through to the end of the page, the "Discussion" sections of Records 50, 51, 168 and 169, the "Metropolitan Toronto Legal Department" section of Record 172, the last two paragraphs in the "Issues" section of Record 172, and Record 205 in its entirety.
2. I order the Police to disclose the remaining records or parts of records, with the exception of the personal identifiers which were severed by the Appeals Officer and forwarded to the Police with the Notice of Inquiry, to the appellant within fifteen (15) days of 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 records which are disclosed to the appellant pursuant to Provision 2 of this order.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ October 26, 1995

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER	DESCRIPTION	EXEMPTION CLAIMED
33	Internal correspondence (MTP 649) to Manager, Occupational Health and Safety from A/Director, Labour Relations	6(1)(b) 10(1)(d)
44	Minutes from the closed Police Services Board meeting (#C290) re: Legal Indemnification, Det. J. Rossi	6(1)(b)
45	Letter from A/Chief to Police Services Board	6(1)(b)
46 - 48	MTP 649 to the Chief, from the Director, Labour Relations re: Legal Indemnification (3 page letter)	6(1)(b) 10(1)(d)
49 - 51	Letter from Metropolitan Legal Department to Police Services Board (3 page letter)	7(1)
52 - 53	Letter from Adamsons Limited to Police Services Board	12
75	Letter from Hicks Morley, to Manager, Labour Relations.	12
77	MTP 649 from Manager, Labour Relations to Medical Bureau	10(1)(d)
166-169	Minutes from the closed Police Services Board meeting (#C429) re: Legal Indemnification, Det. J. Rossi (4 pages)	6(1)(b)
168- 169	Pages 3 and 4 of above	7(1)
170	MTP 649 to Manager, Occupational Health and Safety from the Director, Labour Relations	6(1)(b)
171-172	MTP 649 to the Director, Labour Relations, from Medical Advisory Services (2 page memo)	7(1)
173-174	MTP 649 to the Director, Labour Relations, from Medical Advisory Services (2 page memo)	7(1)
175-176	MTP 649 to the Director, Labour Relations, from Labour Relations Analyst (2 page memo)	10(1)(d)
176A	Letter from Metropolitan Legal Department to Labour Relations Analyst	10(1)(d)
195-196	Minutes of a Labour Relations meeting (2 pages)	10(1)(d)
197	MTP 649 to Vice President, MTP Association from the Director, Labour Relations.	10(1)(d)
198	Letter to Manager Labour Relations, from Vice President of MTP Association.	10(1)(d)

RECORD NUMBER	DESCRIPTION	EXEMPTION CLAIMED
204	Letter from Hicks Morley to Gowling Strathy and Henderson re: legal indemnification	12
205	Letter from Hicks Morley to Labour Relations	12
206	Letter to Det. Rossi from Worker's Compensation Board	12, N/R
208	Letter from Hicks Morley to MTP Association and Police Services Board	12
209	Letter from MTP Association to Hicks Morley	N/R
210	Letter from MTP Association to Third Party Services	N/R
211	Letter from MTP Association to Hicks Morley	10(1)(d) 12
212	Letter to MTP Association from Hicks Morley	10(1)(d) 12
217	MTP 649 from Labour Relations to 41 Division re: legal indemnification	10(1)(d)
220	Letter from Law Firm to MTP Association and Hicks Morley re: legal indemnification	10(1)(d) 12
221	MTP 649 to the Unit Commander at 41 Division from the Manager, Labour Relations	10(1)(d)