



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

ORDER M-670

Appeal M_9500422

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the Occurrence Report and all Supplementary Reports concerning break and enter charges at premises owned by the requester's clients.

The Police identified 12 pages of responsive records, and denied access to all of them on the basis of the following exemption contained in the Act:

- law enforcement - section 8(1)(a)

The requester appealed this decision.

The records consist of a one-page General Occurrence Report; five pages of Supplementary Reports; two one-page Records of Arrest; a one-page Supplementary Record of Arrest; a one-page Property Report and a two-page Property Receipt.

A Notice of Inquiry was sent to the Police and the appellant. Because the records appeared to contain the personal information of the appellant's clients, the parties were asked to comment on the applicability of sections 38(a) of the Act. Section 38(a) provides an institution with the discretion to refuse to disclose an individual's personal information if certain other exemptions, including section 8(1)(a), would apply.

Both parties submitted representations.

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN PERSONAL INFORMATION

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

I have reviewed the records at issue in this appeal and find that they all contain the personal information of the appellant's clients. Three pages of Supplementary Reports also contain the personal information of other identifiable individuals.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Sections 38(a) provides an exception to this general right of access.

I will now consider whether the records qualify for exemption under section 8(1)(a), as a preliminary step in determining whether the exemption in section 38(a) applies.

Section 8(1)(a) reads as follows:

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

interfere with a law enforcement matter;

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 break and enter (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 appellant's clients for fraud in connection with the same occurrence which led to the break and enter investigation. According to the Police, these fraud charges are still before the courts. In the opinion of the Police, the break and enter occurrence and the fraud charges are inextricably linked, and until the courts have disposed of the fraud charges, disclosure of the records could reasonably be expected to interfere with this law enforcement matter.

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 the records could reasonably be expected to interfere with an ongoing law enforcement matter. Therefore, these records satisfy the requirements of section 8(1)(a), and qualify for exemption under section 38(a) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

December 18, 1995