



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

ORDER M-667

Appeal M_9500377

Metropolitan Toronto Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>



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

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 information respecting a complaint made by a named individual. The Police responded by advising the requester that the existence of the records could neither be confirmed nor denied in accordance with section 14(5) of the Act. The requester appealed this decision.

A Notice of Inquiry was sent to the Police and the appellant. Representations were received from both parties. In their representations, the Police state that if records of the nature requested existed, access to them would be denied pursuant to section 14, as well as sections 6(1)(b), 7(1) and 12 of the Act.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY EXISTENCE OF A RECORD

Section 14(5) of the Act provides the Police with the discretion to refuse to confirm or deny the existence of records responsive to the appellant's request. This section provides:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 14(5), the Police are denying the appellant the right to know whether a record exists, even if one does not. This section provides institutions with a significant discretionary power which, in my view, should be exercised only in rare cases.

To rely on section 14(5) of the Act, the Police must do more than merely indicate that records of the nature requested, if they exist, would qualify for exemption under section 14(1). The Police must establish that disclosure of the mere existence or non-existence of such a record would communicate to the requester information which would fall under section 14(1) of the Act.

The Police submit that since the appellant requested information regarding specific complaint(s) registered by a named individual, confirming whether records of the nature requested exist would be an unjustified invasion of another individual's personal privacy.

The appellant has provided me with an article from the Globe and Mail which confirms that the individual named in the request made complaint(s) which resulted in a hearing before a police discipline tribunal. The article names two officers who were charged with offences as a result of the incident and describes the nature of the complaint. The incident and the proceedings before the tribunal were also widely reported in the local media. In my view, confirming the existence of records responsive to the appellant's



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>



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

request would not communicate to the requester information which has not already been reported by the media. Accordingly, I find that disclosure of the mere existence of records would not be an unjustified invasion of privacy under section 14 of the Act, and section 14(5) does not apply.

RECORDS

The Police indicate that “the only available information is in the form of Minutes of a closed meeting of the Metropolitan Toronto Police Services Board.” This record relates to a civil action initiated by the individual named in the request and, in my view, is only tangentially related to the subject matter of the request.

Although the Police indicate that any response to such a request would entail obvious infringements on the privacy of the individual named in the request, their representations do not identify this individual as a person whose personal information is contained in the record which they have provided to me. Having considered the representations I have received, the reports in the media, and the nature of the process within which the complaint was considered, in my view, it is reasonable to conclude that additional records responsive to the request exist.

As I have not upheld the decision to refuse to confirm or deny the existence of records responsive to the request, the Police are obligated to identify all of the information responsive to the request and provide the appellant with a decision regarding access to these records under the Act. I will, therefore, order the Police to conduct a search for records responsive to the appellant’s request, which is appropriately interpreted as “all information in the custody or under the control of the Police which relates to the complaint made by the individual named in the request in respect of an incident which occurred in January 1991.”

CLOSED MEETING

In order 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 that the Police Services Act authorizes the Police Services Board to hold meetings in the absence of the public and that it did, in fact, meet in camera on two occasions: August 6, 1992 and September 10, 1992. Thus, parts one and two of this three-part test are met.



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>



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 toward 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).

Having reviewed the record and the representations, I am satisfied that disclosure of the record would reveal the actual substance of the deliberations, and the record is exempt under section 6(1)(b).

ORDER:

1. In this order, I have disclosed the fact that records responsive to the request exist. I have released this order to the Police in advance of the appellant in order to provide the Police with an opportunity to review this order and determine whether to apply for judicial review. If I have not been served with a Notice of Application for Judicial Review within fifteen (15) days of the date of this order, I will release this order to the appellant within five (5) days of the expiration of the 15-day period.
2. I uphold the decision of the Police not to disclose the record which it provided to me during the course of this appeal.
3. I order the Police to conduct a further search for records responsive to the appellant's request which is appropriately interpreted as follows: all information in the custody or under the control of the Police which relates to the formal complaint made by the individual named in the request in respect of an incident which occurred in January 1991.
4. I order the Police to advise the appellant of the results of this further search, within thirty (30) days after the date of this order.
5. In the event that further records are located as a result of the search mentioned in Provision 2 of this order, I order the Police to provide an access decision to the appellant, in the form contemplated by sections 19, 22 and 23 of the Act, within thirty (30) days after the date of this order, without recourse to a time extension.
6. In order to verify compliance with Provisions 3, 4 and 5 of this order, I order the Police to provide me with copies of the correspondence referred to in these provisions, within thirty-five (35) days





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

after the date of this order. These should be sent to my attention, c/o Information and Privacy
Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

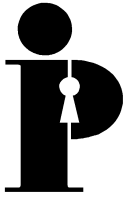
December 15, 1995



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>



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

ORDER M-667

[Addendum]

Appeal M_9500377

Metropolitan Toronto Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

On January 16, 1996, the Metropolitan Toronto Police Services Board (the Police) responded to Provision 6 of Order M-667 by providing me with correspondence which related to the results of the search ordered in Provision 3 of that order. Having reviewed this correspondence, I find that the Police have taken an overly narrow view of the provisions of Order M-667. As a result, I am issuing this addendum to clarify Order M-667 to ensure it is properly interpreted and complied with by the Police.

The wording of Provision 3 of Order M-667 was intended to be read broadly. The provision is not limited merely to information related to the recording of the complaint, but applies to all information related to the complaint in any way, including all information related to the processing of the complaint, its investigation and any proceedings arising from the complaint.

Further to Provisions 4 and 6 of Order M-667, I order the Police to advise the appellant of the results of this search **in writing**, by **February 28, 1996**, and to provide me with a copy of this correspondence at the same time.

In the event that further records are located as a result of this search, then, further to Provisions 5 and 6 of Order M-667, I order the Police to provide the access decision to the appellant by **February 28, 1996**, and to provide me with a copy of this correspondence at the same time.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

January 29, 1996