



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

ORDER M-781

Appeal M_9600001

London Police Services Board



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NATURE OF THE APPEAL:

The London Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all records relating to a specific police occurrence involving the appellant and other individuals. The Police identified 26 pages of responsive records, including a General Occurrence Report, witness statements, correspondence between the Police and the Ministry of Consumer and Commercial Relations (the Ministry), and excerpts from a police officer's notebook.

After giving notice to certain other individuals named in some of the records, the Police provided the requester with full or partial access to some pages, and denied access to the remaining pages and partial pages based on the following exemptions found in the Act.

- law enforcement - sections 8(1)(l) and 8(2)(a)
- invasion of privacy - section 14

A Notice of Inquiry was sent to the appellant, the Police, and individuals named in some of the records who had not consented to disclosure of their personal information at the request stage (the affected persons). Because the records appeared to contain the personal information of the appellant, the Notice raised the possible application of sections 38(a) and (b) of the Act. These sections provide exemptions which may apply to records containing an individual's own personal information. Representations were received from the Police and two affected persons.

Prior to the completion of this inquiry, the Police released three additional pages of records to the appellant.

The records which remain at issue in this appeal are pages 3-10 and 20, and parts of pages 1, 2, 14-17, and 24-26.

DISCUSSION:

INVASION OF PRIVACY

Section 2(1) of the Act defines personal information, in part, as "recorded information about an identifiable individual ...". I have reviewed the records to determine whether any of the undisclosed portions contain personal information and, if so, to whom the personal information relates.

All pages relate to the investigation involving the appellant and subsequent communication between the Police and the Ministry about the appellant, and I find that all pages include the personal information of the appellant. I also find that pages 1, 3-10, 15, 20 and 24-26, and portions of pages 16 and 17 contain the personal information of one or more of the affected persons. Some undisclosed portions of pages 16 and 17 refer to conversations which took place

between a police officer and Ministry officials. I find that this information relates to the professional responsibilities of these individuals and does not qualify as their personal information.

Both sections 14(1) and 38(b) provide exemptions intended to protect personal privacy. However, neither section 14(1) nor 38(b) can apply to information in a record which is exclusively the personal information of the appellant. I find that the undisclosed portions of pages 2 and 14 contain the personal information of the appellant only, and this information is not exempt under sections 14(1) or 38(b).

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals 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 appellant 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. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

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 submit that the presumed unjustified invasion of privacy in section 14(3)(b) applies. This section 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 that disclosure is necessary to prosecute the violation or to continue the investigation;

Having reviewed the pages of the records containing the personal information of both the appellant and one or more of the affected persons, I find that the telephone number of one of the affected persons on page 1, the various witness statements contained on pages 3-10, 15-17 and 20, and the undisclosed portions of the police officers notebook on pages 24-26 were compiled and are identifiable as part of an investigation into a possible violation of law (the Criminal Code), and are subject to the presumption in section 14(3)(b) of the Act.

Sections 14(4) and 16 do not apply in the circumstances of this appeal.

Accordingly, I find that disclosure of the personal information on pages 1, 3-10, 15-17, 20 and 24-26 would constitute an unjustified invasion of personal privacy of individuals other than the appellant, and is properly exempt under section 38(b) of the Act. I have attached a highlighted copy of pages 16 and 17 with the copy of my order provided to the Freedom of Information and Privacy Co-ordinator for the Police, which identifies the portions of these pages which qualify for exemption under section 38(b) and should not be disclosed.

LAW ENFORCEMENT/DISCRETION TO DENY REQUESTER'S OWN INFORMATION

Section 38(a) of the Act gives the Police the discretion to deny access to records containing a requester's own personal information where certain listed exemptions, including section 8, would otherwise apply.

In their representations, the Police submit that the records in their entirety constitute a report which was prepared during the course of a law enforcement investigation, and therefore, is subject to exemption under section 8(2)(a).

Section 8(2)(a) states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In Order 221, Commissioner Tom Wright made the following comments regarding the word "report" found in section 14(2)(a) of the provincial Freedom of Information and Protection of Privacy Act (which is identical in wording to section 8(2)(a) of the municipal Act):

The word "report" is not defined in the Act. However, it is my view ... to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

I agree with this approach and adopt it for the purpose of this appeal. In my view, the various pages of records at issue in this appeal are not properly characterized as a "formal statement or account of the results of the collation and consideration of information", and I find that they do not constitute a "report" for the purposes of section 8(2)(a).

Therefore, I find that the records do not satisfy the requirements of section 8(2)(a), and, subject to my discussion of section 8(1)(l), below, none of the pages are exempt under sections 8(2)(a) or 38(a) of the Act.

The Police have applied section 8(1)(l) of the Act to exempt their patrol zones and patrol car identification numbers which appear on page 1 of the records. In order to determine whether

section 38(a) applies to this information, I will consider whether it qualifies for exemption under section 8(1)(l).

Section 8(1)(l) states:

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

facilitate the commission of an unlawful act or hamper the control of crime.

The Police submit that knowledge of the Police patrol zones and car identification numbers could enable those involved in criminal activities to monitor the whereabouts and actions of specific units in a zone. In their representations the Police provide an example of how this could occur.

The purpose of the exemption in section 8(1)(l) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure could reasonably be expected to result in the harm set out in this section. In the circumstances of this appeal, I am satisfied that the Police have provided sufficient evidence to establish that disclosure of the patrol zones and patrol car identification numbers could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Accordingly, I find that the requirements for exemption under section 8(1)(l) have been met with respect to this information.

Therefore, I find that the portions of page 1 of the records which satisfy the requirements of section 8(1)(l) qualify for exemption under section 38(a) of the Act.

ORDER:

1. I uphold the decision of the Police to deny access to pages 3-10 and page 20 in their entirety, the undisclosed portions of pages 1, 15 and 24-26, and the portions of pages 16 and 17 which are highlighted and attached to the copy of the order sent to the Freedom of Information and Protection of Privacy Co-ordinator for the Police.
2. I order the Police to disclose to the appellant the remaining portions of pages 2 and 14, and the portions of pages 16 and 17 which are **not** highlighted and referred to in Provision 1. I order this disclosure to take place on or before **July 10, 1996** but not earlier than **July 5, 1996**.
3. In order to verify compliance with 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 in accordance with Provision 2.

Original signed by: _____ June 5, 1996

Tom Mitchinson
Assistant Commissioner