



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

ORDER M-829

Appeal M_9600205

Peterborough Community Police Services Board



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NATURE OF THE APPEAL:

The City of Peterborough (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to audit reports prepared by a named accounting firm following its review of the financial affairs of the Peterborough Memorial Centre. Because the audit reports had been provided to the Peterborough Community Police Services Board (the Police), the City considered that the Police had a greater interest in the responsive records and transferred the request to them under section 18(3) of the Act.

The Police identified two records as responsive to the request and denied access to them in their entirety, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 8(1)(a) and (b)
- right to a fair trial - section 8(1)(f)

The requester, a local media outlet, appealed the Police's decision to deny access. A Notice of Inquiry was provided to the Police and the appellant. Representations were received from the Police only.

The records at issue in this appeal consist of two documents entitled "Peterborough Memorial Centre Investigative Review" (the Review) and "Investigative Review Document Brief" (the Brief) dated April 4, 1996.

DISCUSSION:

LAW ENFORCEMENT

Sections 8(1)(a) and (b) of the Act state:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

The Police claim that these exemptions apply to both of the records.

In order for a record to qualify for exemption under sections 8(1)(a) or (b), the matter to which the records relate must first satisfy the definition of the term "law enforcement", found in section 2(1) of the Act. In this case, the Police have established that they have undertaken

an investigation which relates to the findings and conclusions contained in the auditor's reports. I find that this type of policing activity clearly satisfies the definition of law enforcement.

The purpose of the sections 8(1)(a) and (b) exemptions is to provide the Police with the discretion to preclude access to records in circumstances where disclosure could reasonably be expected to interfere with an **ongoing** law enforcement investigation.

The sections 8(1)(a) and (b) exemptions are time sensitive and are only available if an investigation is ongoing. Once a law enforcement investigation has been completed, it is not possible for the Police to rely on these sections as the basis for denying access.

The Police submit that charges under the Criminal Code have been laid and additional charges may still be brought before the courts. The trials of the accused persons have not yet been held. Based on the representations of the Police, I find that the investigation remains ongoing.

The Police bear the onus of providing sufficient evidence to establish the reasonableness of the expected harm. The Police have provided evidence as to the prejudice to its investigation which may result from the release of the records to the appellant. I find, therefore, that the disclosure of the records while this investigation is in progress could reasonably be expected to interfere with an ongoing law enforcement investigation. Accordingly, I find that the records qualify for exemption under section 8(1)(b) of the Act.

Because I have found that the records are exempt under section 8(1)(b), it is not necessary for me to consider the application of sections 8(1)(a) or (f) of the Act.

ORDER:

I uphold the decision of the Police to deny access to the records.

Original signed by: _____
Donald Hale
Inquiry Officer

August 29, 1996