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

ORDER M-839

Appeal M_9600200

Metropolitan Toronto Police Services Board

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NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Metropolitan Toronto Police Services Board (the Police). The request was for copies of the notes taken by a police officer during his visit to the premises of a company following the appellant's complaint that an employee of the company had threatened him.

The Police identified three pages from the police officer's notebook as responsive to the request and granted partial access to them. The Police denied access to portions of the record based on the following exemptions:

- relations with other governments - section 9(1)(d)
- invasion of privacy - section 14

The appellant appealed the denial of access and a Notice of Inquiry was sent to the Police and the appellant. As the Appeals Officer was of the view that the record may also contain the personal information of the appellant, the application of sections 38(a) and (b) of the Act was raised in the Notice of Inquiry. Representations were received from the Police only.

PRELIMINARY ISSUE:

The Police submit that the information severed from the first page and the last three lines of the last page of the record is not responsive to the request. The Police explain that each police officer maintains a memorandum book to describe events of note which take place during his or her tour of duty. The Police claim that parts of the record which they identified as not responsive do not relate to the incident involving the appellant.

I have reviewed these parts of the record and I agree that they do not relate to the incident involving the appellant. As these parts of the record are not reasonably related to the appellant's request, they are not at issue in this appeal.

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/RELATIONS WITH OTHER GOVERNMENTS

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual." Having reviewed the record, I find that it contains the personal information of the appellant and other identifiable individuals.

Section 36(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 38 sets out exceptions to this right.

Under section 38(a) of the Act, the Police have the discretion to deny access to an individual's own personal information in instances where certain exemptions, including section 9(1)(d), would otherwise apply to that information. Section 9(1) states:

> A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
>
> (a) the Government of Canada;
>
> (b) the Government of Ontario or the government of a province or territory in Canada;
>
> (c) the government of a foreign country or state;
>
> (d) an agency of a government referred to in clause (a), (b) or (c).

The information for which section 9(1)(d) was claimed was retrieved from the Canadian Police Information Centre (C.P.I.C.) database by the police officer, and recorded in his memorandum book. In the circumstances of this appeal, the information was supplied to the C.P.I.C. system by the Perth detachment of the Ontario Provincial Police. In Order M-128, former Inquiry Officer Asfaw Seife said with respect to information contained in C.P.I.C.:

> In my view, the mere fact that the [Royal Canadian Mounted Police] administers and maintains C.P.I.C. does not make the RCMP the source of all information that resides in the system. Only the retrieval of information originally supplied to C.P.I.C. by the RCMP can be considered to be "received" from the RCMP.

In many circumstances, it will be clear that a reasonable expectation of confidentiality exists among police agencies providing information to and retrieving information from the C.P.I.C. system. I do not accept, however, that the Ontario Provincial Police have a reasonable expectation of confidentiality as against the appellant with regard to the specific information obtained from the C.P.I.C. system on this occasion. The information retrieved relates to the conditions of the appellant's probation order, which was active at the time. The appellant disclosed the fact of his probation to the officer during their conversation, and is certainly aware of the conditions of his own probation order. Accordingly, I find that section 9(1) does not apply.

INVASION OF PRIVACY

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual." Having reviewed the record, I find that it contains the personal information of the appellant and other identifiable individuals.

Another exception to an individual's right of access is contained in section 38(b). Where a record contains the personal information of both the appellant and other individuals, section 38(b) of the Act allows the institution to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's

personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Disclosing the types of personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the Police can disclose the personal information only if it falls under section 14(4) or if section 16 applies to it. If none of the presumptions in section 14(3) apply, the Police must consider the factors listed in section 14(2), as well as all other relevant circumstances.

The record consists of the notes made by a police officer as a result of a conversation with the appellant. One of the names severed from the record was provided to the police officer by the appellant. Although it can be said that this name was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)), it was clearly provided to the Police by the appellant. In this case, applying the presumption to deny access to information which the appellant provided to the Police in the first place is, in my view, a manifestly absurd result, and the presumption does not apply (Order M-444). In the absence of any factors favouring non-disclosure, I find that the exemption in section 38(b) does not apply to this name.

The name of a second identifiable individual also appears in the information severed under section 9(1)(d). As this name appears within one of the conditions of the appellant's probation order, I find that its disclosure in that context could not be an unjustified invasion of that individual's personal privacy, and section 38(b) does not apply.

ORDER:

1. I order the Police to disclose the record to the appellant by sending him a copy by **October 10, 1996**.

2. 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 1.

Original signed by: September 19, 1996
Holly Big Canoe
Inquiry Officer