



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

ORDER M-831

Appeal M_9600173

Peterborough Community Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant made a request under the Act to the Peterborough Community Police Services Board (the Police) for copies of records relating to his arrest in August, 1994 for criminal harassment. The appellant was subsequently acquitted of this charge, and entered into a peace bond for 12 months.

In particular, the appellant's request specified that he was seeking the following information:

1. all notes and/or statements made by three individuals regarding the appellant;
2. all field notes made by a named police officer regarding the appellant and/or his case;
3. all field notes and reports by the arresting officers;
4. a written explanation as to why a named officer did not show up at meetings with the appellant;
5. all field notes and reports by an unidentified male officer after attending at the appellant's residence in June, 1994;
6. an explanation by this unidentified male officer as to why he did not ask certain questions at that time;
7. a copy of a named individual's statement regarding #5 above;
8. a copy of a named individual's statement made on March 20, 1996;
9. a copy of statements made by other individuals on March 20, 1996; and
10. a written confirmation or denial by the Police regarding their view of the appellant.

The Police located records responsive to the request and determined that the interests of other individuals would be affected by disclosure of the information. The Police notified these individuals and they advised that they did not want any information disclosed. The Police subsequently denied access in part to the records based on the following provisions of the Act:

- invasion of privacy - section 38(b)
- law enforcement - section 8(1)(l)

In their decision letter the Police advised that the above exemptions are being applied to items 1, 2, 3, 8 and 9 of the request. They also stated that records pertaining to items 5, 6 and 7 could not be located in their files and requested additional information from the appellant. In regards to items 4 and 10 the Police advised that these matters could be dealt with through the Office of the Police Complaints Commissioner. The Police also stated that some information was removed from the records as it was not responsive to the request.

The appellant appealed the decision of the Police.

During mediation of this appeal it was confirmed with the appellant that the portions of the records which were severed because they were not responsive to the request (portions of the police officers' notebooks only) would not be at issue in this appeal. The Police response to items 4 and 10 was also confirmed with the appellant; items 4 and 10 are therefore not at issue in this appeal. The appellant advised that he is pursuing a formal complaint on these items to the Office of the Public Complaints Commissioner.

In regards to items 5, 6, and 7 the appellant subsequently provided a letter to the Police which provided more detail regarding these items. As the Police did not respond to this letter, the question of the existence of additional records (reasonable search) is also at issue in this appeal.

A Notice of Inquiry was sent to the appellant and the Police. Because the records appeared to contain the personal information of the appellant, the Notice of Inquiry raised the possible application of section 38(a) of the Act. This section provides an exemption which may apply to records containing an individual's own personal information. Representations were received from the Police only.

RECORDS:

The records at issue are the severed portions of: Record 1 (Incident/Supplementary Report), Records 2 - 4 (Witness/Will Say Statements), Records 5 - 8 (Police officers' notebooks), and all of Record 9 (Incident Details print-out), to which the Police have applied section 38(b) of the Act.

Section 8(1)(l) of the Act has only been applied to the police codes contained in the police officers' notebooks (Records 5 - 8).

DISCUSSION:

PERSONAL INFORMATION

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

The information which has been withheld from the records consists of the personal identifiers of individuals involved in this matter, details of the occurrences and information provided to the Police by other individuals regarding the requester and other persons. I find that this information qualifies as the personal information of the requester and other individuals referred to in the records.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT

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 would otherwise apply to that information.

The Police have applied section 8(1)(l) of the Act to all police "ten codes" contained in the police officers' notebooks, (Records 5 - 8). These codes are numbered message codes used by police officers in their communications. 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 the effectiveness of the codes would be severely limited if they are disclosed. They state that if those intent on engaging in criminal activity are aware of the procedures represented by the codes they could be used to counter the actions of police personnel responding to situations. This could result in the risk of harm to either police personnel or members of the public who are directly involved, i.e. victims and witnesses.

In the circumstances of this appeal, I am satisfied that the Police have demonstrated that disclosure of the police codes in Records 5 - 8 could reasonably be expected to result in the type of harm described in section 8(1)(l) of the Act. Accordingly the police codes are properly exempt from disclosure under section 38(a) of the Act.

INVASION OF PRIVACY

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 requester 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 Police 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.

Section 14(3)(b) of the Act 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.

I have reviewed the records at issue and I am satisfied that the personal information was “compiled and is identifiable as part of an investigation into a possible violation of law” (the Criminal Code), and therefore it meets the requirements of section 14(3)(b). Accordingly, I find that this presumption applies.

As noted above, the only way such a presumption can be rebutted is if section 14(4) or 16 applies. This interpretation is based on the decision of the Divisional Court in John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767.

The information in the records is not information of the type described in section 14(4), and the appellant has not claimed the possible application of section 16. Accordingly, I find that these two sections have no application in this appeal, and I find that disclosure of the withheld portions of the records at issue would constitute an unjustified invasion of personal privacy. The withheld portions of the records (except for the police codes) are, therefore, properly exempt from disclosure pursuant to section 38(b).

REASONABLENESS OF SEARCH

When a requester provides sufficient details about the records which he or she is seeking and the Police indicate that no additional records exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge their obligations under the Act, the Police must provide me with sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records.

In their decision letter, the Police stated that records responsive to items 5, 6 and 7 of the request could not be located in their files and requested additional information from the appellant. The appellant subsequently provided more information to the Police but they did not respond to his letter of clarification.

In their representations the Police submit that another search of their files was completed in regard to items 5, 6 and 7 of the request. The file system was checked for the incident in question by date, persons involved and their addresses, but the search was negative. The appellant believes the incident occurred on or about June 25, 1994. The appellant was not able to recall the names of the police officers involved in the matter and the Police state that it is therefore not feasible to search all police officers' notebooks.

The appellant was not sure whether the telephone call made in June of 1994 was a call to the regular Police number or a "911" call. The Police state that all telephone calls from June of 1994 (other than "911") which are categorized as "Other/Complete Solved", would have been automatically purged by their automated file system according to the Ontario Municipal and Provincial Police Automation Co-operative By-law 5-90. The recording tapes for "911" calls are only kept for 30 calendar days and then they are purged pursuant to Peterborough Community Police Services Board By-law 1990-62. The Police have provided me with the relevant excerpts from By-laws 5-90 and 1990-62.

I have reviewed the evidence on this issue and, in the circumstances of this appeal, I am satisfied that the Police have taken all reasonable steps to locate any records responsive to the appellant's request.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Laurel Cropley
Inquiry Officer

_____ September 10, 1996