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

ORDER M-849

Appeal M_9600224

Metropolitan Toronto 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 submitted a request to the Metropolitan Toronto Police Services Board (the Police) for access to the "major news reports-occurrences" (the Occurrence Sheets) and "major news reports-arrest and story" sheets (the Arrest Sheets), in computerized format. The appellant wanted copies of all records since the Police began storing these documents on a word processing system, estimated by him to be in 1994 or 1995. The appellant is a reporter with a major Toronto newspaper.

The Police denied access to the records, claiming that they qualify for exemption under section 14(1) of the Act (invasion of privacy).

The appellant appealed this decision. He also specified that he wanted his request to include all information current to the date of this order.

The Police provided this office with a representative sample of Occurrence Sheets and Arrest Sheets. With the agreement of both parties, my decision with respect to these sample records will apply to all records responsive to the appellant's request.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

INVASION OF PRIVACY

In order to qualify for exemption under section 14(1) of the Act, records must contain "personal information". This term is defined in section 2(1) of the Act, in part, to mean recorded information about an identifiable individual.

Clearly, none of the records contain any personal information of the appellant.

The Occurrence Sheets contain a general description of an incident (e.g. robbery), the approximate location, and a general description of any suspects and victims, if known (e.g age/approximate age, gender, approximate height, weight, skin colour, etc.). No specific personal identifiers, such as names, addresses, etc. are included. In my view, it is not possible to identify any individual based on the information on the Occurrence Sheets, and I find that these records do not contain "personal information", and therefore do not qualify for consideration under the section 14(1) exemption claim. In addition, the Police state in their representations that they have no objection to releasing the Occurrence Sheets, and I will include a provision in my order requiring the Police to disclose this category of records to the appellant.

The Arrest Sheets, on the other hand, contain the name and address of the person who has been charged, the charges, and a description of the facts leading to the arrest. The names of any young offenders are not included, and complainants are generally not identified. In my view, the Arrest Sheets clearly contain the personal information of the individuals who have been charged.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, sections 14(1)(c) and (f) of the Act read as follows:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,
>
> (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(1)(c)

The appellant submits that the Police release paper versions of the Arrest Sheets on a daily basis to various news media outlets. In his view, the Police have created records available to the general public, and he is simply asking for a computerized version of these records.

The Police, on the other hand, submit that the records are created for internal information purposes, and are made available at Police Headquarters for the media and the public, upon request. The Police submit that any media or public access is secondary to the specific reasons why the records are created.

In my view, even though the Police have a practice of providing paper versions of the Arrest Sheets to the public, it does not necessarily follow that the personal information contained in these records was "collected and maintained **specifically** for the purpose of creating a record available to the general public", as required by section 14(1)(c). The Police contend that the Arrest Sheets are created using personal information originally collected for other purposes, and that these records are maintained for internal purposes. I accept the position of the Police on this issue. It is clear that the names, addresses and other identifying information about an arrested person were collected for the purpose of prosecuting a crime, not for the purpose of creating Arrest Sheets and making them available to the general public. Although these records may be released to the public on occasion, in my view, this is a secondary use which does not satisfy the requirements of section 14(1)(c). Therefore, I find that section 14(1)(c) of the Act does not apply to the circumstances of this appeal.

Section 14(1)(f)

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, the only way such a presumption can be

overcome is if the personal information at issue falls under section 14(4) or where a finding is made that section 16 of the Act applies.

If none of the presumptions contained in section 14(3) are present, the Police must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

The Police maintain that the personal information contained in the Arrest Sheets is highly sensitive (section 14(2)(f)), which is a factor favouring privacy protection. The Police point out that, although personal information about some arrested individuals is released at the time charges are laid, different considerations apply regarding future disclosure of the same information. The Police point to the fact that the arrested person may subsequently be acquitted, the charge may be withdrawn, the accused may be given a discharge, or the arrested person may request the destruction of records associated with the charge. In the Police's view, "there are few things more sensitive than criminal history information".

The appellant disputes the relevance of section 14(2)(f). In his view, the Police must have determined that the information contained in these records was not highly sensitive, otherwise they would not have released paper versions of the Arrest Sheets in the first place.

The appellant feels that sections 14(2)(a) (public scrutiny) and 14(2)(b) (promote public health and safety) are relevant considerations in the circumstances of this appeal, both of which favour disclosure. He states:

> We want to subject [the Police] to public scrutiny. By having access to these records, we will be able to do so, because it will help us gain a better picture of the crimes that are committed and how effective police response was. In addition, access to this information will help promote public safety because, by analyzing the information, we will be able to provide the public with information about the types of crime being committed and the police response to this crime.

In my view, this appeal turns on the question of whether personal information, which is disclosed by the Police on an individual basis in paper format, changes in nature when disclosed in bulk in computerized format.

Arrest Sheets differ in content but not in type. Paper versions are produced on a daily basis and disclosed by the Police without the need for a formal request under the Act or the need to consider and apply any exemption claims. The Compliance Department of this office has determined that individuals charged with criminal offenses can reasonably expect that personal information concerning these charges would be disclosed by police organizations to the community, and that the purpose of this type of routine disclosure is consistent with the original purpose of obtaining and compiling this personal information (section 32(c) of the Act). (See for example, Investigation I96-018P).

However, the records at issue in this appeal are **computerized** versions of the original paper records, stored in bulk. The appellant points out the difficulties associated with using the paper versions of the Arrest Sheets, and states:

> It is virtually impossible to search for information in them, spot trends or conduct any analysis because they are in paper format. The computer, as is well known, is an excellent records management tool with sorting capabilities. My request is simply to obtain this information ... in computer format.

If the appellant is provided with an electronic version of the Arrest Sheets, the restrictions on usage will disappear. He will be able to develop a computer database of records, where various fields of data, including those containing personal information, can be easily searched, sorted, matched and manipulated for a wide variety of purposes. Although section 32(c) of the Act permits disclosure of this personal information at the time of the arrest, in my view, it is not reasonable to conclude that the individuals identified on the Arrest Sheets could have expected that this same personal information would similarly be distributed in bulk and in computerized format. Therefore, I find that section 32(c) does not extend to the disclosure of the electronic version of the Arrest Sheets.

In their representations, the Police refer me to my Order M-68, where I considered a request for access to the criminal record of someone other than the requester. I feel that the reasoning I applied to these records is also applicable to the Arrest Sheets at issue in this appeal.

In Order M-68, I stated:

> In reaching this decision [to uphold the section 14(1) exemption claim], I am aware of the fact that the existence of a particular criminal conviction is a matter of public record, and that this fact would have been disclosed to the public during a trial or plea taken in open court. However, in my view, it does not necessarily follow that this information should be freely and routinely available to anyone who asks.
>
> Although that appeal involved a request for a list of the names of lottery winners, I feel that some of his comments are equally applicable to the request made in this appeal. At page 11 of Order 180, Commissioner Wright stated:
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> > ... In the recent decision in United States Department of Justice, et al., v. Reporters' Committee for Freedom of the Press et al. 109 S.Ct. 1468(1989), the Supreme Court of the United States considered the question of access to criminal identification records or "rap sheets" which contain descriptive information as well as history of arrest, charges, convictions and incarcerations. Much of the rap sheet information is a matter of public record. ... In considering whether or not the disclosure of the rap sheet would constitute an "unwarranted invasion" of the subject of the sheet, Justice Stevens, speaking for the majority, made the following statements which I feel are relevant to the issues that arise in this appeal. At page 1476, Justice Stevens stated that:
> >
> > To begin with, both the common law and the literal understandings of privacy encompass the individual's control of information

> concerning his or her person. In an organized society, there are few facts that are not at one time or another divulged to another. Thus the extent of the protection accorded a privacy right at common law rested in part on the degree of dissemination of the allegedly private fact and the extent to which the passage of time rendered it private.

Further, at page 1477, Justice Stevens stated:

> But the issue here is whether the compilation of otherwise hard_to_obtain information alters the privacy interest implicated by disclosure of that information. Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives and local police stations throughout the country and a computerized summary located in a single clearing house of information.

Finally, at page 1480, Justice Stevens referred to an earlier decision of the Supreme Court in Whalen v. Roe 97 S.Ct 869 at page 872 where the Court stated:

> In sum, the fact that 'an event is not wholly private' does not mean that an individual has no interest in limiting disclosure or dissemination of the information.

Similarly in this appeal, although the appellant may have already been provided with a paper version of the Arrest Sheets he is seeking in electronic format, in my view, this does not mean that an easily retrievable computerized record of all Arrest Sheets should be disclosed. Having carefully reviewed the representations and the records, in my view, the privacy protection considerations outweigh disclosure factors, in the circumstances of this appeal. It is not necessary for me to consider whether these records contain personal information whose disclosure would constitute a presumed unjustified invasion of privacy under section 14(3)(b) (law enforcement). In arriving at my decision, I have taken into account the degree of personal sensitivity of the information, the extent to which the information is already a matter of public knowledge, and the nature of the records themselves. The appellant has failed to convince me that disclosure of a computerized version of the Arrest Sheets would not constitute an unjustified invasion of personal privacy, and I find that the section 14(1)(f) exception to the mandatory exemption for personal information does not apply. Therefore, the computerized version of the Arrest Sheets are properly exempt under section 14(1) of the Act.

I further find that if the names, addresses and other personal identifiers of the arrested individuals are removed from the Arrest Sheets, the remaining portions of these records do not contain personal information.

Section 2 of the Act includes the following definition of "record":

> "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

> (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
>
> (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

Section 1 of O.Reg 22/96 provides:

> A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

I find that, if the Arrest Sheets with all personal information removed meet the requirements of a "record" as defined above, then the appellant is entitled to disclosure of these records.

COMPELLING PUBLIC INTEREST

Section 16 of the Act reads as follows:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (emphasis added)

In order for section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the personal information exemption.

The appellant submits:

> The MTF [Metropolitan Toronto Police Force] is a publicly funded institution. There is an important issue here involving the public trust. These documents, made available in their entirety, will enable us to subject the MTF to scrutiny. It will also allow us to look for trends in crime in certain neighbourhoods in Metro Toronto, which we can then analyze. The results can then be presented to the public in such a way that it will help them better understand crime in the community.

In my discussion of the section 14(1) exemption claim, I found that the appellant is entitled to disclosure of all Occurrence Sheets in computerized format. He may also receive computerized versions of all Arrest Sheets, with personal information removed, as long as these new records

satisfy the definition of "records" included in the Act and accompanying regulations. Having considered the representations of the appellant, I find that he has failed to establish that the additional disclosure of the personal information contained in the Arrest Sheets is necessary in order to address public interest concerns. In my view, the public interest in disclosure of these records is adequately and properly served by the daily practice of disclosing a paper version of the records, and the additional disclosure under the terms of this order.

CONTINUING ACCESS

Section 24(3) of the provincial Freedom of Information and Protection of Privacy Act permits a requester to ask that a request have effect for a specified period of up to two years. No comparable provision exists in the municipal Act, and a requester is therefore required to submit a new request to cover any records created after the date of the original request.

However, it should be noted that records may be released by institutions without formal requests under the Act. This type of routine disclosure has been encouraged by this office as a way of improving customer satisfaction while at the same time reducing costs. I would encourage the Police to consider whether the appellant's ongoing interest in receiving the types of records which are the subject of this order might be handled outside the formal request processes contained in the Act.

ORDER:

1. I uphold the decision of the Police to deny access to the computerized version of all Arrest Sheets with personal information included.

2. I order the Police to disclose the computerized version of all Occurrence Sheets, beginning with the date at which the Police began storing these records on a word processing system, up to and including the date of the appellant's request.

3. I order the Police to disclose a computerized version of all Arrest Sheets, with personal information excluded, provided these new records meet the requirements of the definition of 'records" included in the Act and regulations. This provision is retroactive to the date at which the Police began storing Arrest Sheets on a word processing system, up to and including the date of the appellant's request.

4. I order the Police to complete the disclosures referred to in Provisions 2 and 3 by **November 5, 1996**.

5. In order to verify compliance with 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 Provisions 2 and 3.

Original signed by: October 16, 1996
Tom Mitchinson
Assistant Commissioner

POSTSCRIPT

During the course of this appeal, the appellant offered to provide the Police with blank diskettes in order to assist in reducing the costs of providing him with computerized access. This order in no way affects the ability of the Police and the appellant to agree on such an arrangement.
In his representations, the appellant states that the Police are planning to put both the Occurrence Sheets and Arrest Sheets on their Internet web site. The Police confirm that this option is under discussion by an internal committee, but that no final decision has been made. The Police point out that even if this takes place, the Arrest Sheets will only remain on the web site for a specified period.

If the Arrest Sheets are put on the Police's Internet web site, the appellant and others will be able to download these records for storage on a computerized database. The information contained on the records, including the personal information which I have found qualifies for exemption in this order, could then be used in the same manner as if the records were provided directly by the Police in electronic format. The fact that the records are only on the web site for a specified period is irrelevant as far as electronic access to the information on the Arrest Sheets is concerned.

Because of the potentially serious privacy concerns associated with web site access to the Arrest Sheets with personal information included, I have asked the Compliance Department of this office to contact the Police to discuss these issues in more detail before the internal committee reaches a final decision.