



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

ORDER M-798

Appeal M_9600095

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

In Order M-667, I ordered the Metropolitan Toronto Police Services Board (the Police) to conduct a further search for records responsive to a request made under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information respecting a complaint of sexual harassment made by a named individual, which had been reported widely by the media. The Police located a number of responsive records, and denied access to them under the following exemptions:

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

The requester appealed the decision of the Police to deny access. Twenty-three days after being notified of the appeal, the Police advised the appellant that they would also be relying on sections 6(1)(b) and 7(1) of the Act to deny access.

A Notice of Inquiry was sent to the Police and the appellant. Representations were received from the Police. During the inquiry, the Police disclosed to the appellant 10 pages of newspaper clippings which were contained in the records.

RECORDS:

The records identified as responsive to the request fill two large accordion file folders and total about 1,000 pages. The first folder contains information relating to the service record of the complainant, a synopsis of the investigation, the statement of the complainant and transcribed interviews with 32 employees of the Police. The second file is the working file compiled by the Trials Office of the Police and includes file notes, charging and appearance documentation, the judgement of the Superintendent of the Trials Office, memoranda, checklists, notices, letters to the parties, summonses, details of service, appointment documentation, scheduling memos, hearing notes, exhibits, and other related documents.

DISCUSSION:

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records, and in my view they contain the personal information of a number of identifiable individuals. The appellant’s interest in this matter arose as a result of media coverage of the complaint and his personal information is not contained in the records.

Once it has been determined that a record contains personal information, section 14(1) of the Act **prohibits** the disclosure of this information unless one of the exceptions listed in the section applies. One of these exceptions is found in section 14(1)(f), which permits disclosure if it “... does not constitute an unjustified invasion of personal privacy.”

The Police are adamant that disclosure of these records to the appellant would constitute a wholly unjustified invasion of personal privacy, and made reference to the following sections of sections 14(2) and (3) of the Act in their decision to deny access:

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
 - (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
 - (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
 - (b) 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;
 - (d) relates to employment or educational history;
 - (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
 - (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
 - (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

The Police submit that the records contain the names, addresses, telephone numbers, occupations and employment histories of the complainant, witnesses and accused persons. The Police argue that the especially sensitive and invasive nature of a sexual harassment investigation confers an even greater responsibility on the Police to protect all involved parties.

Although the appellant has not submitted representations, it is my understanding from reading his letters of appeal that he believes that the details of an allegation of sexual harassment among police staff and the response of the Police should be subject to full public disclosure. However, he has not explained why the public proceedings which arose from the allegations were not sufficient to address this concern.

On the other hand, it probably will not make much sense to the appellant that I would uphold the decision of the Police to deny access to records which relate to an incident which was dealt with in a hearing which was open to the public and was widely reported by the media. The records at issue, however, are not a transcript of what was said during the hearing. Further, there is simply nothing before me which would allow me to identify what parts of the records contain personal information whose disclosure would not constitute an unjustified invasion of personal privacy of the individuals identified in the record.

As the appellant has not submitted representations in this inquiry, there is no evidence or argument before me which weighs in favour of disclosing the personal information contained in these records. Because the appellant has not established that disclosure would not be an unjustified invasion of privacy, I find that the mandatory exemption found in section 14 applies.

Since I have found that section 14 of the Act applies to the records, it is not necessary for me to consider whether sections 6(1)(b), 7(1), 8(1)(c) or 8(2)(a) apply to the records.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Holly Big Canoe
Inquiry Officer

July 2, 1996