



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

ORDER M-918

Appeal M_9600371

Sarnia Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Sarnia Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the complete police investigation into a fire which occurred on a specified date at a named location. Specifically, the requester sought access to all statements, papers, notes, videotapes, recordings, reports and telephone calls. The requester represents an insurance company which provided insurance coverage for the property, owned by two individuals (the co-owners).

The Police denied access to the records on the basis of the following exemptions under the Act:

- law enforcement - sections 8(1)(a), (b) and 8(2)(a)
- right to fair trial - section 8(1)(f)
- discretion to refuse requester's own information - section 38(a)

The requester appealed the decision to deny access.

The records at issue consist of a six-page occurrence report dated April 9, 1996 and 13 supplementary reports dated between April 17, 1996 and November 18, 1996.

This office provided a Notice of Inquiry to the appellant and the Police. Because the records appeared to contain the personal information of identifiable individuals, the parties were also asked to comment on the application of section 14 of the Act. Representations were received from both parties.

The appellant has provided consents to disclosure of personal information from the co-owners and their daughter. However, these consents are not relevant in the circumstances of this appeal since the requester represents the insurance company and the Police have claimed the discretionary exemption in section 8 of the Act.

DISCUSSION:

Sections 8(1)(a), (b) and (f) of the Act read as follows:

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;
- (f) deprive a person of the right to a fair trial or impartial adjudication.

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.

The Police submit that the records relate to an investigation of suspected arson, a violation of the Criminal Code, from which a court proceeding and a penalty or sanction could result. I am satisfied that the matter to which the records relate is a law enforcement matter, for the purposes of section 2(1) of the Act.

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 a decision as to the laying of charges has not yet been made and the criminal matter has not been resolved. The Police add that materials at the Forensic Science centre are still being analysed and the investigation is still ongoing.

The appellant submits that nearly twelve months have elapsed since the incident occurred and that the investigation was conducted and concluded during this time.

I have carefully reviewed the records together with the representations of the parties. In my view, the investigation has not been concluded and the matter has not been resolved. Therefore, I find that the investigation remains ongoing. I find that the premature disclosure of the records while the investigation is still 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).

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), (f), 8(2)(a), and 14(1) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ April 3, 1997