



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

ORDER M-968

Appeal M_9700039

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 access to all records, including statements, photos and officers' notebooks relating to the investigation of a fire at the appellant's business premises.

The Police denied access to the responsive records pursuant to the following exemptions:

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

The appellant appealed the denial of access.

During mediation of the appeal, charges in relation to the fire were laid against the appellant and the records at issue were provided to the Crown Attorney. In light of these circumstances, the Police withdrew their reliance on section 8(1)(b) of the Act.

A Notice of Inquiry was sent to the Police and the appellant. As a number of the records at issue appeared to relate to the appellant's client as well as other individuals, the application of sections 38(a) (discretion to refuse the requester's own information) and 38(b) (invasion of privacy) were raised in the Notice of Inquiry. Representations were received from both the Police and the appellant.

The records at issue in this appeal consist of a General Occurrence Report, three Supplementary Reports, excerpts from police officers' notebooks and a witness statement.

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT

"Personal information" is defined in section 2(1) of the Act, in part, as recorded information about an identifiable individual. I have reviewed the records and find that they contain the personal information of the appellant and other 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 general right of access.

Section 38(a) of the Act gives the Police the discretion to deny access to records containing a requester's own personal information where certain listed exemptions, including section 8, would otherwise apply. Section 8(1)(a) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,
interfere with a law enforcement matter;

The purpose of the section 8(1)(a) exemption 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 matter. The Police bear the onus of providing evidence to substantiate that, first, a law enforcement matter is ongoing and second, that disclosure of the records could reasonably be expected to interfere with the matter.

The Police indicate that the records at issue relate to an investigation conducted by the Police and the Fire Marshal's office into a possible arson at the appellant's business premises. The Police indicate that the investigation has been concluded, charges have been laid and are pending before the courts. Having reviewed the records and the representations of the Police, I am satisfied that the Police have provided sufficient evidence to establish that disclosure of the records could reasonably be expected to interfere with a law enforcement matter as the case is now before the courts. I find that section 8(1)(a) of the Act applies to the records and they are, therefore, properly exempt under section 38(a). Accordingly, I need not consider the application of sections 14 or 38(b).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

July 17, 1997