



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

ORDER M-1004

Appeal M-9700052

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to the requester and held in official police files that would be available to the police officers or detectives.

The Police granted partial access to the responsive records. The records relate to a charge of uttering death threats and a previous history of allegations against the requester. Access to the remaining records was denied, in whole or in part, on the basis of the following exemptions:

- law enforcement - section 8(1)(l)
- relations with other governments - section 9(1)(d)
- invasion of privacy - sections 14(1) and 38(b)
- information published or available - section 15(a).

The requester appealed the decision to deny access.

The records to which access has been denied, in whole or in part, consist of records of arrest, supplementary record of arrest, an investigation report, personal references, notice of adjournment, notice of application for adjournment, Canadian Police Information Central Data Bank (CPIC) printouts, court information sheet, a recognizance to keep the peace and documentation relating to a complaint under the Human Rights Code.

This office provided a Notice of Inquiry to the appellant, the Police, the victim and other individuals referred to in the records (the affected persons). The Notice also asked the parties to comment on the application of section 38(a) in conjunction with the application of section 9(1)(d) of the Act. Representations were received from the Police and one of the affected persons.

DISCUSSION:

PERSONAL INFORMATION

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 information contained in the records and I find that it relates to both the appellant and other identifiable individuals, including the victim.

Section 36 of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

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 the exemption in certain sections including sections 8, 9 and 15 would otherwise apply to the disclosure of that personal information.

LAW ENFORCEMENT/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

The Police have claimed the application of section 8(1)(l) of the Act to the undisclosed parts of pages 7, 8, 37 and 43. This information consists of transmission access codes for the CPIC system which allow the Police to gain access to certain criminal records information. Section 8(1)(l) states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime.

The Police submit that it is through these numbers that they are able to access the various databases for criminal records information. The Police submit that disclosure of this information could compromise the security and integrity of the CPIC computer system.

I am satisfied that the disclosure of the transmission access codes in pages 7, 8, 37 and 43 could reasonably be expected to facilitate the commission of an unlawful act, the unauthorized use of the information contained in the CPIC system (Order M-933). I find, therefore, that these portions of the records qualify for exemption under section 8(1)(l) and are exempt under section 38(a) of the Act.

RELATIONS WITH OTHER GOVERNMENTS/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

The Police have claimed section 9(1)(d) to withhold access to part of page 12 (certificate of application investigation report) and all of page 36 (CPIC message printout). Section 9(1) reads:

A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c);
- ...

In order to deny access to a record under section 9(1), the Police must demonstrate that the disclosure of the record could reasonably be expected to reveal information which the Police received from one of the governments, agencies or organizations listed in the section **and** that this information was received by the Police in confidence.

The Police submit that the information on page 37 was supplied to the CPIC by the York Regional Police Services Board, an agency of the Government of Ontario (section 9(1)(b)). The Police state that the information from the CPIC printout was used in the preparation of page 12. The CPIC database is maintained by the Royal Canadian Mounted Police (the RCMP), an agency of the Government of Canada, as a database to which law enforcement agencies supply and from which they can obtain a wide range of information relating to law enforcement.

The Police state that the Police Services Act (the PSA) is the governing legislation with respect to police services in Ontario and that it is administered by the Solicitor General of Ontario. It is the position of the Police that the municipal and regional police services are the law enforcement agencies of the Government of Ontario and therefore, section 9(1)(d) applies. I accept that the Police received the information in the records from another police force, i.e. another agency of the Government of Ontario. I must now consider whether this information was received in confidence or whether it was intended to be treated in a confidential manner.

The Police state that the information in pages 12 and 36 is information received in confidence from another police agency who originally submitted the information to the CPIC database and therefore qualifies for exemption under section 9(1)(d). The Police point out that it retrieved the information electronically from the database to which the Police have access only pursuant to agreements with the RCMP. The Police rely on a report of the CPIC Services which reads:

information that is contributed to, stored in, and retrieved from CPIC is supplied **in confidence by the originating agency** for the purpose of assisting in the detection, prevention or suppression of crime and the enforcement of law.

Previous orders of the Commissioner have found that there exists an expectation of confidentiality with regard to the information contained in the CPIC system which the RCMP provides to municipal police forces across Canada (Orders M-794 and M-826). These orders found that the information contained in the CPIC system is not to be disclosed by any other police organization or agency unless that agency inputted the information into the CPIC system originally. I agree with the reasoning and conclusion reached in these orders and find that they apply equally in the circumstances of this appeal. On this basis, I find that the second element required for the application of section 9(1)(d) has been satisfied and pages 12 and 36 are therefore exempt under section 38(a).

**INFORMATION PUBLISHED OR AVAILABLE/DISCRETION TO REFUSE
REQUESTER'S OWN INFORMATION**

Pages 40 and 41 consist of the appellant's driver's licence history and vehicle ownership record which the Police have obtained from the CPIC database. Section 15(a) provides:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published
or is currently available to the public.

The Police submit that this type of information is currently available to the public. They state that they have advised the appellant of a local telephone number to call to inquire about the most convenient location to him and what costs are involved in obtaining this information.

In Order P-327, Assistant Commissioner Tom Mitchinson considered the meaning of "currently available to the public" for the purposes of section 22(a) of the provincial Freedom of Information and Protection of Privacy Act, the equivalent of section 15(a) of the Act, as follows:

In my view, in order for records to qualify for exemption under section 22(a), they must either be published or available to members of the public generally, through a regularized system of access, such as, for example, a public library or a government publications centre.

In the same order, the Assistant Commissioner went on to state:

In my view, the section 22(a) exemption is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access; it is not intended to be used in order to avoid an institution's obligations under the Act.

As I have indicated previously, the records form part of the information obtained by the Police from the CPIC database. Such documents are clearly not available to the public. In my view, in the circumstances of this case, the alternative access suggested by the Police is not one which leans in favour of the balance of convenience and may be construed as a mechanism to avoid the institution's obligations under the Act. Accordingly, I find that section 15(a) does not apply and the records are not exempt from disclosure under section 38(a) of the Act.

In their representations, the Police have raised the application of section 8(1)(l) to any CPIC transmission and access codes which may appear on pages 40 and 41. For the reasons articulated in my discussion on the application of section 8(1)(l), I find that this exemption applies equally to the CPIC

transmission and access codes which may appear on pages 40 and 41 and they are exempt under section 38(a). These portions of the two pages must not be disclosed.

The Police have not raised any other discretionary exemptions to the remaining parts of pages 40 and 41 and as the information on these pages relates only to the appellant, no mandatory exemption applies. The Police should disclose these pages to the appellant.

INVASION OF PRIVACY

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and another individual 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 appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to his own personal information, the only situation under section 38(b) in which he can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

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 in section 14(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act 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), as well as all other considerations that are relevant in the circumstances of the case.

Pages 1, 2, 35, 44, 45, 46 and 54 contain the name, address, sex and occupation of the victim. Page 17 contains the names, addresses, dates of birth, occupation and telephone numbers of two individuals while page 38 contains the name and address of yet another individual. Pages 31 and 32 contain the employment availability or vacation schedules of two individuals. Pages 52 and 53 contain the names of three individuals against whom the appellant filed a complaint under the Human Rights Code and pages 51, 59 and 61 contain the file reference number for the appellant's complaint.

The Police have raised the presumptions in sections 14(3)(b), (d) and (g) in regard to the pages of the record described above. One of the affected persons has indicated his objections to the disclosure of his personal information on the basis that it was supplied in confidence. He has, therefore, indirectly raised the application of the factor in section 14(2)(h).

I have carefully considered the records and I make the following findings:

[IPC Order M-1004/September 22, 1997]

- (1) I note that the appellant is the complainant in the Human Rights complaint and the names of the three individuals about whom he has complained were clearly provided by him. Similarly, the file reference number assigned to his complaint file is also clearly known to the appellant. In the particular circumstances of this appeal, I find that disclosure of the information withheld on pages 51, 52, 53, 59 and 61 to the appellant would not constitute an unjustified invasion of personal privacy.
- (2) I find that the withheld information on the remaining pages was compiled and is identifiable as part of an investigation into a possible violation of the law (section 14(3)(b)) and disclosure of this personal information would constitute a presumed invasion of privacy.
- (3) I find that sections 14(4) and 16 are not applicable.
- (4) Accordingly, the information contained in pages 1, 2, 17, 31, 32, 35, 38, 44, 45, 46 and 54 is exempt from disclosure under section 38(b) of the Act.

ORDER:

1. I uphold the decision of the Police to deny access to the severed portions of pages 1, 2, 7, 8, 12, 17, 31, 32, 35, 36, 37, 38, 43, 44, 45, 46 and 54. I also uphold the decision of the Police to withhold access to the CPIC access and transmission codes on pages 40 and 41.
2. I order the Police to disclose the remaining information on pages 51, 52, 53, 59 and 61 and pages 40 and 41 (with the CPIC access and transmission codes deleted) to the appellant by sending him a copy of these pages on or before **October 27, 1997**, but not earlier than **October 22, 1997**.
3. In order to verify compliance with the provisions 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 Provision 2.

Original signed by: _____

September 22, 1997

Mumtaz Jiwan

Inquiry Officer