



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

ORDER M-1029

Appeal M-9700177

London Police Services Board



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NATURE OF THE APPEAL:

The London Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a specified police accident report and any additional reports and information relating to the accident. The Police identified 132 pages of documents as responsive to the request.

Pursuant to section 21 of the Act, the Police notified two individuals whose personal information may be contained in the responsive records (the affected persons). Following receipt of their submissions, the Police granted access to all of Pages 2, 4 and 19, along with portions of Pages 1, 3, 7, 8, 9, 10 and 20, to the appellant. Access to all of the remaining information was denied by the Police, relying on the following exemptions contained in the Act:

- facilitate commission of an unlawful act - section 8(1)(l)
- law enforcement - section 8(2)(a)
- invasion of privacy - sections 14(1) and 38(b)

In addition, the Police advised the appellant that, as a result of the application of section 52(3), Pages 21 to 132 of the records fall outside the ambit of the Act. Section 52(3) has the effect of taking certain labour relations and employment-related information outside the scope of the Act.

The appellant appealed the Police decision.

The records at issue fall into two parts. The Part I records, comprising the undisclosed portions of Pages 1, 3, 5-18 and 20, consist of documents which relate to the police investigation of the accident and include witness statements and the notebook entries of the investigating officer. The Part II records, Pages 21 to 132, consist of the documents compiled by the Police in the course of their investigation of the appellant's complaint into the conduct of the investigating officer. Pages 1 and 6-17 of the Part I records are duplicated at Pages 83 to 87, 89, 90 and 112-116 of the Part II records.

A Notice of Inquiry was provided by this office to the appellant, the Police and the two affected persons. Representations were received from the affected persons and the Police only.

DISCUSSION:

JURISDICTION

The first issue to be determined in this appeal is whether the Part II records fall within the scope of sections 52(3) and (4) of the Act. If section 52(3) applies, and none of the exceptions found in section 52(4) apply, section 52(3) has the effect of excluding these records from the scope of the Act, which removes such records from the Commissioner's jurisdiction.

I will first address the potential application of section 52(3)3. In order to fall within the scope of paragraph 3 of section 52(3), the Police must establish that:

[IPC Order M-1029/November 6, 1997]

1. the record was collected, prepared, maintained or used by the Police on their behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; **and**
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the Police have an interest.

[Orders M-835, M-899, M-922 and P-1242]

Requirement 1

Under section 76(1) of the Police Services Act (the PSA) (which appears in Part VI of that statute), the Chief of Police is obliged to establish and maintain a public complaints investigation bureau within the police service to investigate public complaints against police officers. Clearly, during the course of these investigations, information is gathered and stored.

I am satisfied that the Part II records at issue in this appeal were collected, used and maintained by the complaints investigation bureau (which was established by the Police pursuant to section 76(1) of the PSA) during the course of its investigation into the appellant's complaint. Requirement 1 has, therefore, been met.

Requirement 2

When the investigation of the appellant's complaint was completed, the information contained in the Part II records was used "in relation to" the preparation of a report for the Chief of Police, who then made a decision as to the disposition of the complaint, under section 90(3) of the PSA. By means of a final report, the investigating officer communicated the results of his investigation into the appellant's complaint to the Chief of Police.

In Order P-1223, Assistant Commissioner Tom Mitchinson made the following comments regarding the interpretation of the phrase "in relation to" in section 65(6) of the provincial Act, the equivalent to section 52(3) of the Act:

In the context of section 65(6), I am of the view that if the preparation (or collection, maintenance, or use) of a record was **for the purpose of, as a result of, or substantially connected to** an activity listed in sections 65(6)1, 2, or 3, it would be "in relation to" that activity. [emphasis added]

In my view, the Part II records were used by the investigating police officer for the purpose of, and therefore “in relation to”, a communication. I have reached this conclusion because I am satisfied that these records were used to prepare a final report on the results of the investigation, and that the final report is the means of communicating the results to the Chief of Police. Therefore, I find that Requirement 2 has been established.

Requirement 3

I must now determine whether the report to the Chief of Police and the other Part II records relied upon during its creation are “about an employment-related matter in which the [Police have] an interest”. In my view, the Part II records are “about” an investigation under Part VI of the PSA. In Order M-931, I concluded that such an investigation was an employment-related matter. Because of the statutory requirements imposed on the Police in Part VI of the Act to investigate public complaints, I found that the Police “have an interest” in these types of investigations, within the meaning of section 52(3)3. I adopt this approach for the purposes of the present appeal. Accordingly, Requirement 3 has also been met with respect to all of the Part II records.

Since all three requirements have been met, I find that section 52(3) applies to the Part II records comprising Pages 21 to 132. As these are not records to which section 52(4) applies, they are excluded from the scope of the Act.

PERSONAL INFORMATION/INVASION OF PRIVACY

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 undisclosed portions of the Part I records and I find that the information which remains at issue includes the names, addresses and other information about both of the affected persons and the appellant. I find that this information constitutes the personal information of these individuals.

Where a record contains the personal information of both the appellant and other individuals, section 38(b) allows the Police to withhold information from the record if they determine that disclosing that information would constitute an unjustified invasion of another individual’s personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual’s personal privacy. The appellant is not required to prove the contrary.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 14(3) presumption can be overcome is if the personal information falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption.

The Police submit that the presumption in section 14(3)(b), along with the factors in sections 14(2)(e), (f) and (h), apply in the circumstances of this appeal. I will first consider the application of section 14(3)(b), which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

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.

I have reviewed the records and I find that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the personal information in the records because the personal information was clearly "compiled" and is "identifiable" as part of an investigation into a possible violation of law (the Highway Traffic Act) by the appellant.

I find that sections 14(4) and 16 do not apply to the undisclosed information in the Part I records. Accordingly, the withheld portions of these records are properly exempt under section 38(b) of the Act.

Because of the findings I have made in this order, it is not necessary for me to consider the application of the other exemptions claimed by the Police.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ November 6, 1997