



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

ORDER M-1027

Appeal M-9700172

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 an occurrence report and the investigating officer's notes (including any witness statements) relating to an identified incident. The appellant is the victim of the identified incident.

The Police denied access to the records pursuant to the law enforcement exemptions contained in the Act (sections 8(1)(a) and 8(1)(b)). The appellant appealed the decision to deny access to the records.

During mediation, the appellant agreed to remove the occurrence report and the investigating officer's notes from the scope of the appeal. The records remaining at issue are the witness statements provided by two of the appellant's employees.

Further mediation resulted in the appellant providing the Police with the written consent of the two employees to disclose their statements to the appellant. Since the two witnesses have provided written consent to the disclosure of their personal information, invasion of their personal privacy is not an issue in this appeal.

This office sent a Notice of Inquiry to the appellant and the Police. Representations were received from the Police. The appellant indicated that he wished to rely on correspondence he had sent to this office during his appeal as his representations.

DISCUSSION:

LAW ENFORCEMENT

In order for a record to qualify for exemption under this section, the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act. This definition reads:

In this Act,

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The matter to which the records relate is the Police investigation of an armed robbery, committed at the appellant's place of business. In my view, this matter falls within the definition of law enforcement.

The Police submit:

As the definition of law enforcement in section 2(1) of the Municipal Freedom of Information and Protection of Privacy Act means policing, investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings. **This would automatically preclude the release of said records pending the outcome of the investigation.**

[Emphasis added.]

I disagree.

Sections 8(1)(a) and (b) read:

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.

In Order M-838, which the Police have relied on in their representations, I found that:

The purpose of the exemptions contained in sections 8(1)(a) and 8(1)(b) of the Act is to provide the police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter or investigation. The Police bear the onus of providing evidence to substantiate that, first, a law enforcement matter or investigation is ongoing and second that disclosure of the records could reasonably be expected to interfere with the matter or the investigation.

The Police indicate that its Hold-Up Squad has confirmed that the armed robbery of the appellant's business remains under active investigation. I accept that the law enforcement matter or investigation is ongoing. However, establishing that an investigation or matter is ongoing is **not** sufficient to establish the application of sections 8(1)(a) or (b).

The Police provide no specific details to establish that disclosure of these two witness statements, provided by employees of the appellant who have consented to their disclosure to the appellant, could reasonably be expected to interfere with the law enforcement matter or the investigation. The Police merely assert that:

As previously indicated, premature disclosure of information concerning an investigation could either intentionally or inadvertently, cause an obstruction of justice for any or all concerned when this matter is eventually brought to court. Furthermore, the institution would be second guessing the courts decision on what can or can not be allowed as evidence.

In my view, in the circumstances of this appeal, the Police have not discharged their onus of establishing a reasonable expectation of interference with the matter or investigation, and sections 8(1)(a) and (b) do not apply.

ORDER:

1. I order the Police to disclose the records to the appellant by providing him with a copy by **November 21, 1997**.
2. In order to verify compliance with the provision of 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 1.

Holly Big Canoe
Inquiry Officer

October 30, 1997