



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

## **ORDER M-1093**

**Appeals M-9700330, M-9700331 and M-9700332**

**Meaford Thornbury Police Services Board**



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## **NATURE OF THE APPEALS:**

The appellant submitted three requests to the Meaford Thornbury Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Police responded to all three requests and the appellant appealed each decision. I will set out below each request, the decision issued with respect to it, and the records at issue, under the appeal number which has been assigned to the appeal.

### **Appeal M-9700330**

In this request the appellant requested access to eight identified occurrence reports and a specified audio tape.

The Police denied access to one occurrence report and an audio cassette tape pursuant to sections 8(1)(a), (b) and 8(2)(a) (law enforcement), 8(1)(f) (right to fair trial), and 14(1) (invasion of privacy) of the Act.

After consultation with the individuals named in the records, the Police granted partial access to the seven remaining occurrence reports. Access was denied to portions of these reports pursuant to sections 8 and 14(1) of the Act.

The appellant appealed this decision to deny access to the records.

The records at issue consist of seven partially severed occurrence reports, one completely severed occurrence report and one audio tape.

### **Appeal M-9700331**

In this request the appellant requested access to two occurrence reports which related to a named individual on specified dates.

The Police denied access to the two requested occurrence reports pursuant to sections 8(1)(a) and (b), 8(2)(a), 8(1)(f), and 14(1) of the Act.

The appellant appealed this decision to deny access to the records.

The records at issue consist of two occurrence reports.

### **Appeal M-9700332**

The appellant requested access to an occurrence report which related to a named individual on a specified date.

The Police granted partial access to the requested occurrence report. Access was denied to portions of the occurrence report pursuant to sections 8(1)(a), 8(2)(a) and 14(1) of the Act.

The appellant appealed this decision to deny partial access to this record.

The record at issue consists of the severed portions of a two-page occurrence report.

This office provided a Notice of Inquiry to the Police and the appellant. Because the records in Appeal M-9700330 and M-9700331 may contain the personal information of the appellant and/or other identifiable individuals, sections 38(a) (discretion to refuse requester's own information) and 38(b) (invasion of privacy) of the Act were raised as issues with respect to these two appeals.

Representations were received from both parties.

## **DISCUSSION:**

### **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 records and find that all of the records in Appeals M-9700330 and M-9700331 contain the personal information of the appellant as well as the personal information of other identifiable individuals. The remaining record in Appeal M-9700332 contains the personal information of an identifiable individual but does not contain the appellant's personal information.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the institution to withhold information from the record if it determines 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.

Where, however, the record only contains the personal information of another individual, section 14(1) of the Act prohibits an institution from disclosing it except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

In both these situations, sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the 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 at issue 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 claim that section 14(3)(a) applies to information in occurrence number 961823 (in Appeal M-9700330), and that section 14(3)(b) applies to all of the records in Appeals M-9700331 and M-9700332, as well as the audio cassette tape and the following occurrence reports in Appeal M-9700330: 961823, 961895, 971216 and 971232. It is not clear whether the Police are claiming the application of section 14(3)(b) to the remaining three occurrence reports in Appeal M-9700330. Therefore, I will also consider the application of this section to these records. The Police submit that the following factors under section 14(2) also apply to exempt the audio cassette tape and all of the occurrence reports from disclosure: sections 14(2)(e), (f) and (i). These sections read as follows

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
  - (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
  - (f) the personal information is highly sensitive;
  - (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
  
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
  - (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
  - (b) 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.

In reviewing the records I note that any "medical" information in occurrence number 961823 was not provided by a qualified medical practitioner and, therefore, does not fall within the presumption in section 14(3)(a).

I am satisfied that the information in the audio cassette tape and occurrence reports 961823, 961895, 971216 and 971232 (in Appeal M-9700330) and the records in Appeals M-9700331 and M-9700332 was compiled and is identifiable as part of law enforcement investigations into alleged criminal and provincial offences and its disclosure would be a presumed unjustified invasion of privacy under

section 14(3)(b). The Police did not claim the application of section 14(3)(b) for occurrence report 971280 (in Appeal M-9700330), however, I find that it also falls within this presumption as it was compiled and is identifiable as part of a law enforcement investigation into an alleged criminal offence.

With respect to the remaining three occurrence reports in Appeal M-9700330, although the Police were involved in these matters, they did not pertain to a possible violation of law and section 14(3)(b) does not apply.

I agree with the Police that, in the circumstances of these appeals, the fact that individuals have contact with the police as complainants, witnesses or suspects is itself highly sensitive information. I further agree that disclosure of the identities of witnesses or suspects, in the context of this appeal, may unfairly damage the reputation of a person referred to in the record and may expose a person to some harm. However, the information in occurrence reports 971230 and 971286 was provided by the appellant and the appellant was clearly present throughout the recording of the information in occurrence report 971235. In my view, to withhold this information from disclosure would lead to an absurd result and this outweighs any of the section 14(2) factors. Therefore, these three occurrence reports in Appeal M-9700330 are not exempt under section 38(b).

I find that neither section 14(4) nor section 16 are applicable to the records to which I have found section 14(3)(b) applies. Accordingly, the records are properly exempt from disclosure under sections 14(1) and 38(b) of the Act.

### **REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT/RIGHT TO FAIR TRIAL**

The Police claim that the exemptions in sections 8(1)(a), (b), (f) and 8(2)(a) apply to all or some of the records. As I have found that the majority of the records are properly exempt under section 14(1) or 38(b), I will only consider the possible application of the exemptions in section 8 to the three remaining occurrence reports in Appeal M-9700330 (971230, 971286 and 971235). The Police have applied only sections 8(1)(a) and 8(2)(a) to these three records.

As previously stated, these three records contain the personal information of the appellant and other identifiable individuals.

Section 38(a) of the Act gives an institution discretion to deny access to a record containing a requester's own personal information where certain listed exemptions, including section 8, would otherwise apply. Sections 8(1)(a) and 8(2)(a) provide:

- 8(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
  - (a) interfere with a law enforcement matter;
- (2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

The purpose of the exemption contained in section 8(1)(a) 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. 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.

In order to qualify for exemption under section 8(1)(a), 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. Section 2(1) of the Act defines “law enforcement” in the following manner:

“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 Police submit that the matters to which the records relate satisfy the definition of the term “law enforcement” even though they pertain to incidents or issues not requiring an investigation. The Police indicate that these reports are headed as “information type reports”, and were prepared in response to some type of policing service.

Following my review of the records themselves, I find that they relate to matters which fall within the definition of “law enforcement” found in section 2(1).

The Police do not specifically address these three records in their representations. With respect to the component requirements of this exemption, however, the Police submit that:

... disclosure of these records, ... could cause interference with a law enforcement matter irregardless of the status of the matter itself, whether ongoing or not. The institution is of the opinion that if the disclosure of these records cause disruption in any fashion relating to the contents of the records, then it would be interfering with a law enforcement matter.

In my view, if I were to accept this argument, then virtually all law enforcement information would be subject to exemption and that is clearly not the intent of this legislation. Moreover, the Police do not provide any detail in regard to whether these matters are ongoing or how disclosure could reasonably be expected to interfere with the matters recorded in the occurrence reports at issue in this appeal. I find that the Police have not satisfied the onus on them of providing evidence to substantiate that a law enforcement matter is ongoing and that disclosure of the records could reasonably be expected to interfere with the matter. Accordingly, I find that these three records are not exempt under section 8(1)(a).

In order to qualify for exemption under section 8(2)(a) of the Act, a record must satisfy each part of the following three part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

In order to satisfy the first requirement, the record must be a "report." The word "report" is not defined in the Act. Previous orders have found that in order for a record to be considered a report, it must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order M-1048).

In my view, these three occurrence reports are most accurately described as recordings of facts, which as noted above, do not qualify as "reports" for the purposes of section 8(2)(a). Therefore, this exemption claim does not apply, and as no other exemptions apply to these three records, they should be disclosed to the appellant.

### **ORDER:**

1. I order the Police to disclose occurrence reports 971230, 971286 and 971235 in appeal M-9700330 to the appellant by providing him with a copy of these three reports on or before **May 4, 1998**.
2. I uphold the decision of the Police to withhold the remaining records from disclosure.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ April 14, 1998