



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1162

Appeal MA-980142-1

Belleville Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Belleville 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 copies of any complaints received by the Police with respect to the requester's activities "in the Northeast Community Policing Zone". The appellant served as a civilian community policing volunteer prior to being discharged in January of this year. The Police located a number of responsive records and denied access to portions of them, claiming the application of the invasion of privacy exemptions contained in sections 14(1) and 38(b) of the Act.

The requester, now the appellant, appealed the decision of the Police to deny access to the records.

During the mediation of the appeal, the Police agreed to disclose additional records and parts of records to the appellant, who also agreed not to pursue access to certain undisclosed portions of the records. At the instance of the appellant, a search for additional records was undertaken by the Police. As a result, the Police located an additional two records. Access to these records was denied in full, pursuant to the invasion of privacy exemptions in sections 14(1) and 38(b) and the law enforcement exemption in section 8(2)(c) of the Act.

The appellant indicated that he wished to proceed with the appeal only with respect to these two records, which consist of two "witness statements", two and three pages in length. These statements were made by two civilian volunteers with the Police (affected persons one and two) who were present at a meeting of other volunteers, including the appellant and a third affected person, as well as a police officer. The records document their recollections of the discussions which took place following the public portion of the meeting of January 13, 1998. Following the meeting, the Police dismissed the appellant and the third affected person from its volunteer community policing organization. The statements were not taken as part of an investigation into a crime, nor did they contain any allegations of criminal behaviour which would warrant police intervention.

A Notice of Inquiry was provided to the appellant, the Police and to the two volunteers who provided their statements to the Police. Representations were received from the appellant and the Police. During the inquiry stage of the appeal, the appellant also provided me with a written consent from the third affected person, who is also referred to in the records, agreeing to the disclosure of any information relating to him to the appellant.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including "the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual".

I have reviewed the information contained in the records and find that they contain the names of the appellant and the three affected persons, along with other personal information about each of them, including their addresses and home telephone numbers. In addition, I find that the disclosure of the names of the affected persons would reveal other personal information about these individuals relating to their activities as volunteers with the Police. Accordingly, in my view, the records contain the personal information of the appellant and each of the three affected persons.

LAW ENFORCEMENT/DISCRETION TO DENY REQUESTER'S OWN INFORMATION

Section 36(1) 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.

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. The Police submit that the records are exempt under section 8(2)(c) of the Act. This section states:

A head may refuse to disclose a record,

that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability;

The Police suggest that, in keeping with their past actions, it is reasonably likely to assume that the appellant and the third affected person will initiate civil proceedings against the other two affected persons should the records be disclosed.

In order for a record to qualify for exemption under section 8(2)(c), it must first satisfy the definition of a "law enforcement" record contained in section 2(1). In this section, the term "law enforcement" is defined to mean:

"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);

In Order P-416, Assistant Commissioner Tom Mitchinson indicated that in order for a record to qualify as a "law enforcement record", an institution must establish that "... it has a law enforcement mandate, and that

the record is directly related to this mandate". I agree with this view and adopt it for the purposes of this appeal.

In my view, the police clearly have a "law enforcement mandate" for the purposes of section 8(2)(c). However, while the records were prepared on a form entitled "Witness Statement" and were submitted to and witnessed by a police officer, I cannot agree that they relate directly to the Police's law enforcement mandate. The records document discussions which took place involving its civilian volunteers. In my view, the subject matter of the records does not relate directly to the law enforcement mandate of the Police, such as the prevention or solving of crime. Rather, I find that the records relate to the community outreach and public relations activities of the Police which, in the circumstances of this case, fall outside the ambit of its law enforcement mandate.

Furthermore, section 8(2)(c) requires that disclosure "could reasonably be expected to" result in a particular harm. This is the same wording found in section 8(1), and in my view, this means that the party relying on this exemption must establish a reasonable expectation that the disclosure of the records would result in the harm alleged before section 8(2)(c) can be relied upon. The representations of the Police refer to a possible legal action against the affected persons but contain no specific information to explain why it would be reasonable to expect such an action to be brought. Even if the records were found to be law enforcement records, I find that a reasonable expectation that the harm alleged could result from the disclosure has not been established. The records do not qualify for exemption under section 8(2)(c) and are not, therefore, exempt under section 38(a).

INVASION OF PRIVACY

As noted above, section 36(1) 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(b) of the Act, where a record contains the personal information of both the appellant and other individuals 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 requester access to that information.

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. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2).

As noted above, the third affected person has consented to the disclosure of his personal information to the appellant. Section 14(1)(a) provides that:

[IPC Order M-1162/November 17, 1998]

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

Accordingly, as the third affected person has consented in writing to the disclosure of his personal information to the appellant, I find that the exception in section 14(1)(a) applies and I will order that it be disclosed to the appellant.

Operation of the Presumption in section 14(3)(g)

The Police submit that the information consists of personal recommendations or evaluations and character references and, thereby, qualifies under the presumption in section 14(3)(g). In Order P-447, Adjudicator Holly Big Canoe made the following comments with respect to the application of the presumption in section 21(3)(g), which is the equivalent provision in the provincial Act to section 14(3)(g):

In my opinion, the terms "personal evaluations" or "personnel evaluations" refer to assessments made according to measurable standards. The records contain opinions, comments and observations provided by the primary and secondary affected persons during the course of an investigation of an allegation of sexual harassment and, in my view, do not consist of personal or personnel evaluations. Accordingly, I find that the presumption of unjustified invasion of personal privacy contained in section 21(3)(g) does not apply.

I adopt the approach taken by Adjudicator Big Canoe for the purposes of this appeal. In my view, the comments contained in the records cannot reasonably be characterized as "assessments made according to measurable standards". The comments were made by the affected persons reflecting their perceptions of certain discussions involving the appellant and the third affected person and do not consist of personal or personnel evaluations made according to measurable standards, within the meaning of the presumption in section 14(3)(g).

Considerations under section 14(2)

The Police submit that they have confirmed with the affected persons who prepared the statements which comprise the records that the information was supplied by them with an expectation that it would be treated in a confidential manner, as contemplated by section 14(2)(h).

The appellant's submissions indicate that the disclosure of the records is necessary in order for him to "have the grounds to file a competent appeal" of the decision of the Police to terminate his voluntary service. This consideration is included in section 14(2)(d), which addresses disclosure in the context of a fair

determination of the requester's rights, and favours the disclosure of the personal information contained in the records.

The appellant also infers the application of a further unlisted factor under section 14(2). The appellant indicates that he is interested in clearing his name and obtaining a reinstatement to his position as a volunteer with the Police. In Order 37, former Commissioner Sidney B. Linden dealt with records compiled in the course of an investigation into an employment-related complaint. In that decision, former Commissioner Linden stated that:

fairness demands that the person complained against be given as much disclosure of the substance of the allegations as is possible. The degree of disclosure ... should be more extensive if the complaint is likely to result in discipline.

I find that this unlisted consideration, which favours the disclosure of the information contained in the records, is applicable to those portions of the records which relate directly to the appellant. While the appellant was not an employee of the Police, he and the affected persons served as civilian volunteers with the police service. The records do not contain allegations of misconduct on the part of the appellant and the third affected person; they simply document a discussion which took place between the volunteers and a member of the police service following a public meeting on January 13, 1998. The affected persons are, however, critical of the manner in which the appellant and the third affected person expressed their opinions through the course of this discussion.

In my view, the factors favouring the disclosure of those portions of the records which record the discussion involving the appellant and the third affected person outweigh those which favour the privacy protection of the other two affected persons. However, I find that the disclosure of those portions of the records which contain only the personal information of the affected persons would constitute an unjustified invasion of their personal privacy. As such, this information, which I have highlighted on the copy of the records which I have provided to the Freedom of Information and Privacy Protection Co-ordinator for the Police, is exempt from disclosure under section 38(b). The disclosure of the remaining, non-highlighted portions of the records, would not constitute an unjustified invasion of personal privacy and this information is not exempt under section 38(b).

ORDER:

1. I uphold the decision of the Police to deny access to those portions of the records which I have highlighted on the copy of the records which I have provided to the Freedom of Information and Privacy Protection Co-ordinator for the Police.
2. I order the Police to disclose to the appellant those portions of the records which are **not** highlighted by providing him with a copy by **December 22, 1998** but not before **December 17, 1998**.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the records which are provided to the appellant pursuant to Provision 2.

Original signed by: _____

_____ November 17, 1998

Donald Hale
Adjudicator