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

ORDER MO-1335

Appeal MA-000107-1

Toronto 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/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The appellant wrote to the Toronto Police Services Board (the Police) asking "why there is [a Firearms Interest Person (FIP) notation] on my CPIC record placed there by your department on October 17, 1997." The appellant explained that his objective was "twofold. First to determine what this is all about. And second to remove it." The appellant asked that the Police treat his request as being made under the Municipal Freedom of Information and Protection of Privacy Act (the Act).

In response, the Police explained that "the FIP database was implemented to satisfy the provisions of section 5 of the [federal] Firearms Act." The Police also identified two records, consisting of four pages, as responsive to the request, and stated that partial access to the records was being granted. The Police advised that access was being denied to portions of the records pursuant to sections 8(1)(l) (disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime), and section 38(b) in conjunction with section 14(1)(f) (unjustified invasion of another individual's privacy). In addition, the Police explained that some information in the records was being withheld because it was not responsive to the appellant's request. The Police enclosed four pages of severed records with the decision letter.

The appellant then wrote to the Police explaining that his objective was to have the FIP notation "expunged from my CPIC record, and nothing more." The appellant also provided details about the incident giving rise to the FIP notation, and asked on what basis the notation was put in place. He then explained that although the listed expiry date for the notation was October 17, 2002, five years after the incident, this was "onerous" and should be reduced to three years. The appellant also stated his view that the exemptions cited by the Police do not apply. The appellant asked the Police for a more detailed response as to why the Police were relying on the cited exemptions, and for "summary information as to the nature of the information that was withheld." The appellant further stated:

> Alternatively, if the FIP notation was placed on my CPIC record without a court order and in the normal course of conducting an investigation, at which time [named police officers] may have routinely specified an expiry date of up to five (5) years, perhaps this matter could be resolved directly by those constables by simply amending the expiry date of the FIP notation on my CPIC record to coincide with the completion of their investigation. Accordingly, I would appreciate your recommendation as to how I might directly approach one or all of them, or one of their superiors, to accomplish this end.
>
> In conclusion, the existence of this FIP notation endangers my safety in routine situations where I have occasion to have contact with the police. For example, in the past two months and for no other possible reason than the FIP notation, I was approached by constables, hand-over-holster, and searched ostensibly for weapons. One instances occurred when reporting the vandalization of my car window, and the other occurred when a merchant mistakenly believed my AMEX card was reported lost or stolen. In both instances the constables knew my name and ran a CPIC check before approaching me. As you can see, this FIP notation impacts my day-to-day life. Accordingly, if it should be necessary I will have to take legal steps in court here or in Ontario, and will attend in person, in order to have this FIP notation expunged from my CPIC record.

The Police responded by stating that "the retention of information on a FIP entry is outside the jurisdiction of the [Police]." The Police also indicated that the appellant may contact a named staff member "to discuss the current firearms legislation", or appeal the decision to this office.

The appellant then appealed the decision of the Police to this office.

I sent a Notice of Inquiry setting out the issues in the appeal to the appellant initially. After receiving the appellant's representations, I determined that it was not necessary for me to seek representations from the Police.

RECORDS:

The two records at issue in this appeal consist of a one-page CPIC report (Record 1) and a three-page occurrence report (Record 2).

The Police withheld some information from Record 1 on the basis of section 8(1)(l) of the Act. This information is described as "format codes for accessing the CPIC database."

The Police withheld information from Record 2 on the basis of section 38(b) in conjunction with section 14(1)(f). The Police also cited the presumption against disclosure at section 14(3)(b) (personal information compiled as part of an investigation into a possible violation of law) with respect to this record.

DISCUSSION:

PERSONAL PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The appellant submits that Records 1 and 2 contain personal information relating to him only, and not of any other individuals. The appellant specifically states with respect to Record 2 that any information it contains with respect to a person he refers to as "the informant" (the affected person) is not that individual's personal information. The appellant argues that the identity and any statements made by the affected person constitute "public information" made "in a formal report to the police and, as such, should be available to anyone."

Both records clearly contain the appellant's personal information. In addition, Record 1 contains no personal information of any other individuals. However, I do not accept the appellant's submission that information about the affected person in Record 2 does not constitute that person's personal information. The definition of "personal information" in section 2(1) requires only that the information be "about" the individual in question; whether or not that information can be considered public or whether or not it should be disclosed under the Act is not relevant to this determination. In the circumstances, I find that Record 2 contains personal information of both the appellant and the affected person.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/UNJUSTIFIED INVASION OF OTHER INDIVIDUALS' PRIVACY

Introduction

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 institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has 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 institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

Section 14(1)(b) - health or safety

The appellant submits that section 14(1)(b) is applicable to Record 2 in the circumstances. That section reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

The appellant submits that having the FIP notation on his CPIC record constitutes a threat to his health and safety.

I do not accept the appellant's argument that section 14(1)(b) applies. In my view, the appellant has failed to establish a reasonable link between disclosure of the information in the record pertaining to the affected person, and any threat to his health or safety.

Section 14(1)(c) - public information

The appellant also submits that the affected person "volunteered" the information in Record 2 to "a public agency", and that this information would be "released at trial" if "the report was substantiated and a violation of law had occurred . . . irrespective of the wishes" of the affected person. The appellant argues that by

providing the information to the Police, the affected person "waived any reasonable objection by the Police to her name being released." These submissions suggest the application of section 14(1)(c) which reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > personal information collected and maintained specifically for the purpose of creating a record available to the general public;

I do not accept the appellant's submissions on this point. In my view, consistent with my findings under section 14(3)(b) below, the information in question was collected and maintained for the purpose of investigating a possible violation of law, not for the purpose of creating a record available to the general public. As a result, I find that section 14(1)(c) does not apply.

Section 14(3)(b) - law enforcement

The Police have cited section 14(3)(b) in conjunction with section 38(b), with respect to Record 2. Those sections read:

> 38. A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
>
> 14. (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > (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;

The appellant makes extensive representations, detailing the history of his legal and other interactions with the affected person and other individuals and organizations. However, for the most part, these representations do not directly address the specific issues arising in this appeal, as described above and in the Notice of Inquiry sent to the appellant.

It is clear, based on the material before me, that the withheld information in Record 2 consists of personal information of the affected person, and that this information was compiled and is identifiable as part of an investigation into a possible violation of law, namely provisions of the Criminal Code.

I am satisfied that disclosure of any of the information withheld by the Police would constitute an unjustified invasion of the affected person's privacy pursuant to section 14(3)(b). I am also satisfied that the Police have properly exercised their discretion under section 38(b) of the Act.

The appellant submits that the information in question is not true and that, therefore, section 14(3)(b) cannot apply. Whether or not personal information compiled by the Police in the course of a law enforcement investigation is ultimately determined to be accurate, or whether or not charges are subsequently laid, section 14(3)(b) may apply [see, for example, Order P-242]. Therefore, I do not accept that section 14(3)(b) cannot apply in the circumstances. (I note, however, that pursuant to section 36(2) the appellant is entitled to request correction of any information pertaining to him to which he has already been given access).

Section 14(2) factors

The appellant also makes extensive submissions on the application of the factors at section 14(2)(b), (d), (e), (f), (g) and (i). Once a presumption under section 14(3) is established, that presumption cannot be overcome by one or any combination of factors under section 14(2). As a result, even if I were to find that any of the cited factors applied, the Police nevertheless may exercise their discretion to withhold the information in question on the basis of an unjustified invasion of the affected person's privacy. Therefore, it is not necessary for me to make specific findings on the application of these factors.

Section 16 - public interest override

Section 16 of the Act reads:

> An exemption from disclosure of a record under sections 7, 9, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption [emphasis added].

In order for the section 16 "public interest override" to apply, two requirements must be met: there must be a compelling public interest in disclosure; and this compelling public interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner), [1999] O.J. No. 484 (C.A.)].

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 16 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption [Order P-1398, cited above].

The appellant submits that "release of the withheld information is vital for continuation of the investigation. .. there are compelling reasons to believe that [the affected person] has filed a false police report in this matter, that apparently this is not the first instance that she has done so, that there is a likelihood that this will occur again, and therefore the public is at risk, including the appellant."

In my view, the appellant's arguments under section 16 are not persuasive. The appellant's interest in this matter is primarily private in nature, and I am not convinced that any public interest which might exist in

disclosure of this information would be such that the "compelling" threshold is met. As a result, I find that section 16 does not apply to override the application of the section 14 exemption.

Conclusion

I find that section 14(3)(b), in conjunction with section 38(b), applies to the personal information withheld from Record 2. As a result, I uphold the decision of the Police with respect to Record 2.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT

The Police have claimed that section 8 (law enforcement) of the Act applies to information withheld from Record 1. In particular, the Police have claimed the application of section 8(1)(l) of the Act, which reads:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

The Police describe the information withheld from Record 1 as "format codes for accessing the CPIC database".

In Order M-933, Inquiry Officer Mumtaz Jiwan stated:

> The Police claim the application of section 8(1)(l) of the Act to the undisclosed codes contained in the CPIC printout (Record 2). These codes consist of transmission access codes for the CPIC system which allow the Police to gain access to certain criminal records information . . .
>
> The Police submit that the disclosure of this type of information could compromise the security of the CPIC security system and would make unauthorized and illegal access to the CPIC system easier, contrary to various provisions of the Criminal Code relating to the unauthorized use of data contained in computer records. I accept the submissions of the Police. I find that disclosure of the access codes for the CPIC system could reasonably be expected to facilitate the commission of an unlawful act, the unauthorized use of the information contained in the CPIC system. Accordingly, I find that the codes qualify for exemption from disclosure under section 8(1)(l) of the Act.

The appellant submits that Order M-933 is distinguishable, because the requester in that case was not the individual to whom the CPIC information related. The appellant argues that, unlike in Order M-933, he requires this information in order to defend himself and his reputation.

In my view, the findings in Order M-933 are applicable to information of this nature, regardless of the identity of the requester. Where information could be used by any individual to gain unauthorized access to the CPIC database, an important law enforcement tool, it should be considered exempt under section 8(1)(l).

To conclude, I find that the information withheld from Record 1 is exempt under section 8(1)(l).

REASONABLE SEARCH

The appellant submits that additional records responsive to his request should exist.

In the circumstances, it would not be appropriate to make a determination on this issue, since it was raised too late in the process. The issue of whether or not the Police have identified all of the records responsive to the request was not identified in the Report of Mediator and, to the best of my knowledge, was raised for the first time in the appellant's representations.

My decision not to address this issue is made without prejudice to the appellant's right to make a new access request for additional records, and his right to appeal any decision by the Police in response.

ORDER:

I uphold the decision of the Police to withhold portions of the records at issue.

Original signed by: September 8, 2000
David Goodis
Senior Adjudicator