



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

ORDER MO-1385

Appeal MA-000234-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto 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 certain photographs and a security videotape taken in the course of an investigation of a murder which took place in August 1997. The Police located the responsive photographs and videotape and denied access to them, in their entirety, claiming the application of the following exemptions contained in the *Act*:

- law enforcement - sections 8(1)(a) and (b)
- invasion of privacy - section 14(1), with reference to the presumption in section 14(3)(b)

The appellant appealed the decision of the Police to deny access to the requested photographs and videotape.

I decided to seek the representations of the Police initially. The Police made submissions, which they agreed to share, in their entirety, with the appellant. I forwarded a copy of the Notice and the representations of the Police to the appellant who indicated to me that he would not be making any submissions.

The records at issue in this appeal consist of 69 photographs (Records 1 to 69) and one security videotape (Record 70).

DISCUSSION:

LAW ENFORCEMENT

The Police have claimed the application of sections 8(1)(a) and (b) to the responsive records. 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 states:

“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 words “could reasonably be expected to” appear in the preamble of section 8(1), as well as in several other exemptions under the *Act*, dealing with a variety of anticipated “harms”. Previous orders of this Office have found that in order to establish that the particular harm in question “could reasonably be expected” to result from disclosure of the record, the party with the burden of proof must provide “detailed and convincing” evidence to establish a “reasonable expectation of probable

harm” [see Order P-373 and *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 and 40 (Div. Ct.)].

The activities of the Police in investigating a possible homicide under the *Criminal Code* clearly qualify as “law enforcement” activities as the term is defined in section 2(1) of the *Act*.

The purpose of the exemption contained in sections 8(1)(a) and (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. 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. [See Orders P-324, P-403 and M-1067]

The Police have advised me that the requested information relates to an investigation into an unsolved murder. They further indicate that their investigation is continuing. The photographs and the videotape which form the records at issue in this appeal were taken at the scene where the murder took place. They record the physical evidence which has been compiled by the Police in the course of their investigation.

The Police rely on the findings of Assistant Commissioner Tom Mitchinson in Order MO-1314 where he made certain findings with respect to the application of section 8(1)(b) to crime scene photographs taken the course of a Police investigation into a murder. He found that:

As far as the police officers’ notebook entries which comprise Records 215-216, 219-220, 298-300 and 305-306, and the crime scene photographs contained in Records 335-339 and 341-355 are concerned, which do not contain the appellants’ personal information, I find that I have been provided with detailed and convincing evidence from the Police sufficient to establish that disclosure of these records could reasonably be expected to interfere with this ongoing murder investigation, and they qualify for exemption under section 8(1)(b) of the *Act*. Record 320 and the licence plate number contained in Record 355, which I found qualify for exemption under section 14(1), also qualify for exemption under section 8(1)(b) in the alternative.

In the circumstances of this appeal, I concur with the findings of Assistant Commissioner Mitchinson in Order MO-1314. Based on the representations of the Police and my review of the records, I find that I have been provided with the kind of detailed and convincing evidence which is sufficient to establish that the disclosure of the records at issue could reasonably be expected to interfere with the ongoing murder investigation. As the Police point out and I agree, the integrity of the murder investigation could reasonably be expected to be compromised by the disclosure of the requested records. Accordingly, I find that they are exempt, in their entirety, under section 8(1)(b).

Because of the manner in which I have addressed the application of section 8(1)(b) to the records, it is not necessary for me to consider whether they are also exempt from disclosure under section 14(1) of the *Act*.

ORDER:

I uphold the decision of the Police.

Original Signed By: _____ January 9, 2001
Donald Hale
Adjudicator