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

ORDER MO-1402

Appeal MA_000174_1

London 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 made a request to the London Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the notes of a named police officer, an occurrence report, and a report prepared by the University of Western Ontario Police. All of these records relate to an incident that transpired in February 2000 which involved the appellant.

The Police initially granted partial access to the occurrence report and notebook entries. The appellant was not satisfied with this decision and appealed to this Office.

During the course of mediation, the Police made additional disclosures to the appellant and narrowed the scope of the exemptions originally claimed. By the time the appeal was transferred to the adjudication stage, the issues and records that remained outstanding were:

1. Notebook entries: the Police claim that some parts are not responsive to the request, and that the remaining responsive parts are exempt under:

    - section 38(a) (in the context of sections 8(1)(d) and (l) and section 8(2)(a)) - law enforcement; and

    - section 38(b) (in the context of sections 14(3)(b) and 14(2)(h)) - invasion of privacy.

2. Occurrence report: the Police claim that the remaining parts are exempt under the same sections as the notebook entries.

3. University Police report: the Police claim that the record is exempt in its entirety under:

    - section 38(a) (in the context of sections 8(1)(d) and (e), and sections 8(2)(a) and (c)) - law enforcement; and

    - section 38(b) (in the context of section 14(3)(b) and sections 14(2)(e) and (h) - invasion of privacy.

4. Public interest: the appellant raises the possible application of the public interest override in section 16.

During the course of processing this appeal, the appellant raised the possible application of section 36(2) of the *Act*. This section gives an individual the right to request a correction of errors or omissions of personal information contained in records received in response to an access request. As far as I can determine, the appellant has not submitted a correction request to the Police under section 36(2), nor has the Police made a decision in this regard. Therefore, this issue is not before me in this appeal.

Once the appeal had moved to the adjudication stage, I sent a Notice of Inquiry initially to the Police and three individuals whose interests might be affected by the outcome of this appeal (the affected persons).

Two affected persons submitted representations in response to the Notice. Both of them objected to the disclosure of any of their personal information. The third affected person contacted the Police and voiced similar objections.

The Police also provided representations in support of its position that the remaining information should not be disclosed. I then sent the Notice to the appellant, along with a copy of the non-confidential portions of the Police's representations. The appellant also submitted representations.

PRELIMINARY ISSUE:

Responsiveness of the Record

The Police claim that some of the notebook entries relate to work activities undertaken by the police officer on the same day as the incident involving the appellant, but on completely different and unrelated matters.

The appellant's representations on this issue are not helpful.

The explanation provided by the Police is reasonable and supportable based on my review of the contents of this record. I find that information concerning occurrences and individuals which do not pertain to the events involving the appellant are clearly not relevant to the appellant's request, and therefore not responsive (see Order P-880).

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/INVASION OF PRIVACY

Personal Information

In support of the section 38(b) exemption claim, the Police maintain that the records contain the personal information of both the appellant and other identifiable individuals. The affected persons also submit that the information about them is their personal information.

"Personal information", as defined in section 2(1) of the *Act* means recorded information about an identifiable individual, including the individual's name where 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.

Having reviewed the records, I find that they contain the personal information of the appellant and the three affected persons. The records document an incident involving the appellant and other individuals which took place at the University of Western Ontario, and subsequent activities undertaken by the University Police and the Police in this regard.

Specifically, I find that the records primarily contain the personal information of the appellant, including his age, sex, education history, birth date, address, phone number and various opinions about the appellant. To a lesser degree, the records also contain the personal information of the three affected persons. This information consists of the role played by these individuals in the incident in question, and the information about these individuals provided to or obtained by the Police and/or the University Police dealing with the incident. In the circumstances of this appeal, I find that, although the information about the affected persons has a connection to their professional responsibilities at the University, it is essentially about them in a personal capacity and is not properly or accurately considered their professional information.

Invasion of Privacy

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. However, this right is not absolute. Section 38 provides a number of exceptions to this general right of access, including section 38(b), which allows an institution to deny an individual access to their own personal information if to do so would constitute an unjustified invasion of another individual's personal privacy. Section 38(b) introduces a balancing principle. The Police must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy.

In determining whether the exemption in section 38(b) applies, sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of personal privacy. Section 14(2) provides some criteria for the institution to consider in making this determination, and section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. The Divisional Court has stated that 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) (*John Doe* v. *Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

The Police have relied on the "presumed unjustified invasion of personal privacy" in section 14(3)(b) as one basis for denying access under section 38(b). This section reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > 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 Police make the following representations regarding the application of section 14(3)(b):

> Clearly, the record at issue, which clearly contains the personal information of the [affected persons], was compiled and is identifiable as a part of an investigation into a possible violation of law, in this case a complaint of *trouble with person*, resulting in the appellant, being warned by the University of Western Ontario

> (UWO) Police. Even though charges were not laid at the time, this in no way minimizes the fact that this was a legitimate law enforcement investigation, which resulted in a warning to the appellant pursuant to the *Trespass to Property Act*.
>
> I refer to Order P-237, where the Commissioner stated, *"The fact that no criminal proceedings were commenced against these individuals does not negate the applicability of subsection 21(3)(b). The presumption in subsection 21(3)(b) only requires that there be an investigation into a possible violation of law."* (Note: Section 21(3)(b) of the *Freedom of Information and Protection of Privacy Act* is the equivalent of Section 14(3)(b) of the *Municipal Freedom of Information and Protection of Privacy Act*.)
>
> The London Police have the function of enforcing the law, pursuant to the *Police Services Act* R.S.O. 1990, Chapter P.15. Further, the University of Western Ontario Police are a law enforcement agency. Under the authority of the Ministry of the Solicitor General, and pursuant to Chapter 10, Section 53.(3) of the *Police Services Act*, the London Police may appoint "special constables" and confer on him or her the powers of a police officer, to the extent and for the specific purpose set out in the appointment. The University of Western Ontario Police are such "special constables" and have the function of enforcing the *Criminal Code* and Ontario Provincial Statutes on the campus of the University of Western Ontario in co-operation and compliance with the policies of the London Police Services and the London Police Services Board.

The appellant's representations dispute that the investigation undertaken in response to the incident could relate to a possible violation of law, given his view of the University's likely response to an incident of this nature.

I accept the position put forward by the Police on this issue. I find that the three records were all created as a result of an investigation by the Police and the University Police into an incident which took place at the University. I also find that this was an investigations into a possible violation of law, in this case the *Criminal Code* and/or the *Trespass to Property Act*. Consequently, I find that disclosure of the personal information of the affected persons contained in these records would constitute a presumed unjustified invasion of their privacy under section 14(3)(b) of the *Act*. As correctly pointed out by the Police, this presumption applies even if, as in the present case, no charges were laid (Orders P-223, P-237 and P-1225).

Because the section 14(3)(b) presumption cannot be outweighed by any factor or combination of factors under section 14(2), it is not necessary for me to deal with the appellant's position that section 14(2)(d) should apply in the circumstances of this appeal.

The Police have provided submissions on the exercise of discretion in deciding to apply section 38(b). I am satisfied that discretion was exercised properly in this case, and I find that the portions of the three records which contain the personal information of the affected persons qualifies for exemption under section 38(b) of the *Act*.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT

The Police claim section 8(1)(l) of the *Act* as the basis for denying access to the police zone number on page 1 of the Occurrence Report, and the "ten-code" number used by the police officer in his notebook. This section states:

> 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.

A number of previous orders have found that codes of this nature qualify for exemption under section 8(1)(l) (see, for example, Orders M-757 and M-781). I make the same finding in this appeal.

Accordingly, I find that the Police properly exercised their discretion under section 38(a) to deny access to the information that qualifies for exemption under section 8(1)(l).

Because of my findings under sections 38(a) and 38(b), it is not necessary for me to consider sections 8(1)(d) or (e) and 8(2)(a) of the *Act*.

PUBLIC INTEREST IN DISCLOSURE

The appellant claims that section 16 applies to the records exempt from disclosure. Section 16 of the *Act* states:

> An exemption from disclosure of a record under sections 7, 9, 10, 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)

For section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance)* v. *Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)].

The gist of the appellant's position is that there is a public interest in disclosure because litigants should know who to sue and not have to waste their own resources in obtaining this knowledge.

In my view, there is no compelling public interest in disclosing the personal information of the affected persons which I have determined would constitute a presumed unjustified invasion of their privacy. The appellant's concerns are particular to his own personal situation, and the procedures and processes of the courts are available to him in pursuing any possible civil law suit.

Therefore, I find that section 16 is not relevant in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police.

Original signed by: February 28, 2001
Tom Mitchinson
Assistant Commissioner