



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1467**

**Appeal MA-000201-2**

**London Police Service**



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 London Police Service (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

any and all information your department [the London Police Service] has on file pertaining to myself... including any documentation relating to background investigations, occurrence reports, Provincial/Federal charges, criminal history and any other records/reports, under the authority of the *Act*.

In a decision dated June 2, 2000, the Police divided the request into two parts. Firstly, they advised that no records exist pertaining to occurrence reports, Provincial/Federal charges, criminal history and any other reports. Secondly, they advised that information pertaining to background investigations is excluded from the operation of the *Act* under section 52(3) of the *Act*. The requester appealed the Police's decision to exclude records under section 52(3), and a file was opened at this office under Appeal Number MA-000201-1. During the mediation stage of the appeal, the Police withdrew their reliance on section 52(3), and agreed to issue a new decision letter to the appellant regarding access to the responsive records. Accordingly, a Mediator's Report was issued and this office closed Appeal MA-000201-1.

The Police subsequently issued a decision on November 14, 2000, granting partial access to some of the records requested. Access to the remaining records (approximately 97 pages) was denied under the following exemptions contained in the *Act*:

- sections 8(1)(c) and (g) and 8(2)(a) - law enforcement;
- section 9(1)(d) - relations with other governments;
- section 10(1) - third party information;
- sections 14(1) and 38(b) - invasion of privacy;
- section 38(a) - discretion to refuse requester's own information;
- section 38(c) - evaluative or opinion material.

The requester (now the appellant) appealed the Police's decision to deny access to the remaining records and this office opened Appeal Number MA-000201-2.

During the mediation stage of the appeal, the Police issued a revised decision raising the application of the discretionary exemption in section 7 of the *Act* (advice or recommendations) to deny access to portions of the records. The revised decision was made within the 35-day period allowed for the late raising of additional discretionary exemptions during the appeals process. The Police also provided the appellant with an index of records, along with the revised decision.

Also during mediation, the appellant advised that he no longer sought access to 87 pages of the records at issue, and narrowed the scope of his request to include only the background investigation report (8 pages) and two intelligence documents (2 pages).

As further mediation was not possible, the matter was moved into the Inquiry stage of the appeal process. Initially, I provided the Police with a Notice of Inquiry soliciting their submissions with respect to the exemptions claimed. The Police provided me with representations which were

then shared, in part, with the appellant. I withheld portions of the submissions of the Police from the appellant because of concerns I had regarding the confidentiality of them. The appellant also made representations in response to the Notice.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The personal privacy exemptions referred to in section 38 apply only to information which qualifies as “personal information”, as defined in 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 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 [paragraph (h)].

The Police submit that the records contain the personal information of the appellant and other identifiable individuals. I find that because all of the records relate to the evaluation of the appellant by the Police, they contain his personal information, as that term is defined in section 2(1) of the *Act*. In addition, each of the records, with the exception of page 94, also contain the personal information of other identifiable individuals.

### **EVALUATIVE OR OPINION MATERIAL**

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. The Police submit that all of the records, with the exception of Record 94, are exempt from disclosure under the discretionary exemption found in section 38(c) of the *Act*. This section states:

A head may refuse to disclose to the individual to whom the information relates personal information,

that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by an institution if the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;

For a record to qualify for exemption under section 38(c), the Police must satisfy each part of the following three-part test:

1. the personal information itself must be evaluative or opinion material;

2. the personal information must be compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits;
3. disclosure of the personal information would reveal the identity of a source who furnished information to the Police in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence.

[Order 157]

I have reviewed the records and the circumstances of the appeal, and am satisfied that the first two parts of the above test have been met. The personal information is evaluative or opinion material and was compiled solely for the purpose of determining the appellant's suitability for employment as a police officer.

In my view, in order for the third part of the test to more clearly address the complex wording found in section 38(c), it should be divided into two components. That is to say, the Police must establish that:

- (a) The information was supplied to the Police in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence; **and**
- (b) The disclosure of the record would reveal the identity of the source of the information.

[Order M-132]

The contents of the records themselves make it quite clear that their disclosure would reveal the identity of the source of the information. The records also contain information which would unequivocally identify the individuals who provided certain information to the Police. Accordingly, I find that component (b) of the third part of the test has been met.

With respect to component (a), I find that it is reasonable to assume that, in the circumstances of the Police investigation of the appellant, the informants would have expected that the information provided to the Police would be treated in a confidential manner. As all three parts of the test enunciated for section 38(c) have been satisfied, I find that the personal information contained in the records, with the exception of that contained in page 94, is exempt from disclosure under section 38(c).

## **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT**

In addition to section 38(c), another exception to the general right of access is found in section 38(a) of the *Act*, under which an institution has the right to deny an individual access to his or her own personal information in instances where the exemptions in sections 6, 7, 8, 9, 10, 11, 12, 13 or 15 would otherwise apply to the information. In this case, the Police rely on section 8(1)(g) of the *Act*, in conjunction with section 38(a) to deny access to the information contained in page 94. I will, accordingly, consider whether section 38(a), taken together with section 8(1)(g), apply to exempt page 94 of the records from disclosure.

### **Section 8(1)(g)**

Section 8(1)(g) provides:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

The purpose of the section 8(1)(g) exemption is to provide the Police with the discretion to preclude access to records in circumstances where disclosure would interfere with the gathering of or reveal law enforcement intelligence information. Previous orders have defined intelligence information as:

information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violation of law, and is distinct from information which is compiled and identifiable as part of the investigation or a specific occurrence (Orders M-202 and P-650).

The Police submit that page 94 is a document obtained from its intelligence files which was obtained from another police service by the London Police and was created in the course of carrying out policing responsibilities in the detection and prevention of crime. They argue that their responsibilities include collecting, maintaining, analyzing and disseminating intelligence information between law enforcement agencies. The Police conclude by submitting that the disclosure of this information would “restrict the ability of law enforcement to monitor and communicate criminal activity without interference, and negatively impact future cooperation amongst police agencies.”

Based on my review of the contents of page 94, I find that the disclosure of this information could reasonably be expected to interfere with the gathering of or would reveal law enforcement intelligence information respecting certain persons. As a result, I find that page 94 qualifies for exemption under section 8(1)(g) and is exempt from disclosure under section 38(a).

Because of the manner in which I have addressed the application of sections 38(a) and (c) to the records, it is not necessary for me to consider whether they are also exempt from disclosure under sections 8(1)(c), 8(2)(a), 9(1)(d), 10(1), 14(1) or 38(b) of the *Act*.

**ORDER:**

I uphold the decision of the Police to deny access to the records.

Original signed by: \_\_\_\_\_

Donald Hale  
Adjudicator

September 19, 2001 \_\_\_\_\_