



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1493

Appeal MA-010024-1

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/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This appeal arises from a request made to the London Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for “an itemized list of expenses and claims filed by” a named individual (the affected person) for the period January 1, 1999 to December 15, 2000.

The Police located records responsive to the request, but denied access to them on the basis of the exemption at section 8 (law enforcement) of the *Act*. The Police also stated:

The records at issue are subject to investigation under the provisions of the *Police Services Act*, section 65. This institution takes the view that any premature disclosure of the records may interfere with this investigation.

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

During the mediation stage of the appeal, the Police issued a revised decision, in which it claimed that, in addition to section 8, the records (or portions thereof) are also exempt pursuant to the personal privacy exemption at section 14, and the valuable government information exemption at section 11.

Also during mediation, the appellant restricted the scope of his request to include only those records relating to three specific events.

The appellant further clarified his request, indicating that he is not seeking access to the following information:

The Police Visa credit card number, the Police mobile telephone number, the telephone numbers that the Police called from the mobile telephone or the telephone number of incoming calls received on the mobile telephone, the named individual's home address, the personal information of anyone other than the named individual, and the personal expenses of the named individual if the named individual reimbursed the Police for these expenses within three months.

As a result, the Police advised that they would no longer be relying on the exemption at section 11 to deny access.

This office sent a Notice of Inquiry setting out the issues in the appeal to the Police, who returned representations in response. In its representations, the Police raised for the first time the possible application of section 52(3) which, if applicable, would take the records outside the scope of the *Act*. This office then sent a modified Notice of Inquiry to the appellant, who did not return representations. Later, this office sent a supplemental notice to the Police seeking its representations on the possible application of section 52(4)4, an exception to section 52(3) relating to expense accounts. The Police provided no further representations.

RECORDS:

There are 20 pages of records containing the information at issue, all relating to the three categories specified by the appellant as set out above. In some cases, the entire record is at issue, while in other cases portions of the records are not responsive based on the appellant's revised request. The records consist of three travel expense forms (pages 49-52, 106-107), portions of two cardholder statements (pages 53, 110), portions of a series of receipts (pages 54-57, 111-112), portions of two cellular telephone statements (pages 250, 262), portions of travel expense statements (pages 97, 100, 103) and a petty cash request form and related invoice (page 198).

DISCUSSION:

APPLICATION OF THE ACT

Section 52(3) is record-specific and fact-specific. If section 52(3) applies to the record, then the record is outside the scope of the *Act*. However, if one of the listed exceptions in section 52(4) applies, then the record will be considered to be within the scope of the *Act*.

The Police claim that section 52(3)1 applies to the records at issue. In the circumstances of this case, the exception at section 52(4)4 may apply to bring the records within the scope of the *Act*, notwithstanding the possible application of section 52(3)1. The section 52(4)4 exception reads:

This *Act* applies to the following records:

4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

Neither the Police nor the appellant made representations on the application of section 52(4)4.

In my view, all of the records qualify for the exception in section 52(4)4, as being expense accounts submitted by the affected person, an employee of the Police, to the Police, for the purpose of seeking reimbursement for expenses incurred by the affected person in his or her employment. Although some of the records are not expense forms *per se*, such as receipts, I am satisfied that these records would have been attached to those forms or in any event constitute expense accounts under section 52(4)4. In this regard, I note that the expense forms indicate that receipts "must" be attached. Therefore, the section 52(3) exception does not apply in the circumstances.

LAW ENFORCEMENT

Introduction

The Police claim that the information at issue qualifies for exemption under sections 8(1)(a), (b) and (f) of the *Act*. Those sections read:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (f) deprive a person of the right to a fair trial or impartial adjudication;

In order to establish that the particular harm in question under section 14(1)(a), (b) or (f) “could reasonably be expected” to result from disclosure of the records, the Police must provide “detailed and convincing” evidence to establish a “reasonable expectation of probable harm” [Order PO-1772; see also Order P-373, two court decisions on judicial review of that order in *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 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

Section 14(1)(a): interference with a law enforcement matter

The Police submit that the records relate to charges against the affected person under both the *Police Services Act* and the *Criminal Code*, which are currently pending. The Police further submit:

Clearly, this particular investigation which involves the allegation of misuse of expense accounts, and which, initially, was being investigated pursuant to section 65 of Part V of the *Police Services Act* and which has now resulted in a *Criminal Code* charge, is a law enforcement matter.

. . . [T]he release of any documents that could be used as evidence in this case, would certainly compromise the case now before the courts and would also certainly compromise the investigation that continues pursuant to the *Police Services Act*.

Further, the [Police] cannot release documents that are clearly now under the control of another police service relating to their *Criminal Code* charge.

In my view, the Police have provided sufficient evidence to establish that premature disclosure of these records, which are central to the *Police Services Act* and *Criminal Code* charges against the affected person, could reasonably be expected to interfere with these continuing law enforcement matters. This finding is consistent with previous orders of this office in the context of records relating to on-going law enforcement matters (see, for example, Order PO-1898). As

a result, I find that the portions of the records at issue qualify for exemption under section 8(1)(a) of the *Act*. In the circumstances, it is unnecessary for me to determine whether sections 8(1)(b), 8(1)(f) or 14 also apply.

ORDER:

I uphold the decision of the Police to withhold portions of the records, and I dismiss the appeal.

Original Signed By: _____

David Goodis
Senior Adjudicator

December 14, 2001 _____