



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1637**

**Appeal MA-020061-1**

**Ottawa Police Service**



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## **NATURE OF THE APPEAL:**

The appellant was charged with an offence under section 254 of the *Criminal Code* after being stopped in his car (the incident) by two members of the Ottawa-Carleton Regional Police Service, now the Ottawa Police Service. He subsequently submitted a 33-part request to the Ottawa Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the incident, and to records relating to training, lesson plans, internal directives, policies and the identity of various kinds of equipment used by the Police.

The Police located a number of responsive records and denied access to them, in full, claiming the application of the following exemptions contained in the *Act*:

- Law enforcement – sections 8(1)(a) and (b) and 8(2)(a);
- Right to a fair trial – section 8(1)(f);
- Invasion of privacy – sections 14(1) and 38(b), with reference to the presumption in section 14(3)(b); and
- Discretion to refuse requester's own information – section 38(a).

The appellant appealed the decision of the Police to deny him access to the responsive records.

During the mediation stage of the appeal, the Police issued a second decision, in which they provided the appellant with an index of the responsive records, and advised him that no records exist that are responsive to Items 13, 15, 23 and 26 of his request.

The appellant advised the Mediator assigned to this file that he wished to have the issue of the "reasonableness of search" added to the appeal, in addition to his appeal of the exemption claims.

No further mediation was possible, and the appeal was moved to the adjudication stage of the process.

This office sought representations from the Police initially, as they bear the onus of establishing both the reasonableness of their search and the application of the exemptions claimed. The Police did not submit representations.

After reviewing the records, I decided that it was not necessary to seek representations from the appellant.

## **RECORDS:**

The records at issue consist of the following:

<b>Record #</b>	<b>Description</b>	<b>Exemption Claimed</b>
1-14	Occurrence report	8 (1) (a), (b), (f), 8 (2) (a), 14 (1) (f), 14 (3) (b), 38 (a) and (b)
15-40	How to Operate the Radar and Lidar	8 (1) (a), (b), (f) and 8 (2) (a)
41-76	Instructions for Use: Draeger Alcotest	
77-78	Calibration Procedures	
79-130	Calibration logs	
131	Letter dated April 11, 2002 re: Draeger Alcotest Service record	
132-134	How to use duty books	
136-143	Lesson plan on the Use of Force	
144-148	Procedures	
149-153	Use of Force Procedures	
154-165	Arrest-Search-Release Procedures	
166-168	Traffic Stop and Vehicle Search Procedures	
169-180	Suspect Apprehension Pursuit Procedures	
181-183	Tandem Stop Rolling Block Procedures	
184-199	Lesson Plans	
200-204	Ride Alongs	
205	E-mail from a named police officer	
206-212	Impaired Driving Procedures	
213-214	Procedures dealing with Intoxicated persons	
215-228	Court Security Procedures	
229	Video on How to Operate the Alcotest Machine	
230	Use of Force Training dates	

## **CONCLUSION:**

The records at issue are not exempt and should be disclosed to the appellant. The search conducted by the Police was not reasonable and I will order a new search.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual. The Police have claimed that sections 14(1) and 38(b) apply to pages 1-14 of the records.

Pages 1-14 comprise the occurrence report prepared in connection with the incident involving the appellant. It documents the identity of the appellant and the attending police officers, the circumstances under which the police became involved and the actions taken. Apart from the appellant and these police officers, no other individual is referred to in or identifiable from the record.

I find that this record contains the appellant's personal information in that it pertains to the contact he had with the police and is, therefore, about him.

Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be considered to be "about the individual" within the meaning of section 2(1) definition of "personal information" [Orders P-257, P-427, P-1412, P-1621].

On review of this record, I am satisfied that the officers identified in it were acting in their official capacity and that this is a routine document prepared by them in the normal course of their duties. On this basis, I find that the record does not contain their personal information.

Because this record contains only the personal information of the appellant, neither section 14(1) nor 38(b) is applicable as a basis for withholding the information in it.

In the absence of representations from the Police, I have also reviewed the remaining records. They all pertain to Police procedures and administrative documents. Any references to individuals in these records similarly pertain to them in their official capacity. Accordingly, I find that the remaining records do not contain personal information and sections 14(1), and 38(a) and (b) are not applicable as a basis for withholding them.

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

The Police have also applied the discretionary exemptions in sections 8(1)(a), (b), (f) and 8(2)(a) to the records at issue.

In addition, they claim the discretionary exemption in section 38(a) for pages 1-14. Since I found above that pages 1-14 contain the appellant's personal information, this discretionary exemption may be considered.

Where a record contains the personal information of the requester, the Police may refuse to disclose it to that individual under section 38(a) if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

Section 8 is also a discretionary exemption. As I noted above, the onus is on the Police to satisfy me that this exemption claim is applicable in the circumstances.

The Police did not submit representations. Looking at the records themselves, I am unable to determine whether there is even a possibility that the harms envisioned by this section might occur should the records be disclosed.

Accordingly, I find that the Police have failed to establish that any of the section 8 exemptions applies to the records at issue. I find further that section 38(a) does not apply to pages 1-14.

As a result of these conclusions, I find that the records at issue are not exempt under the *Act* and should be disclosed to the appellant.

## **REASONABLENESS OF SEARCH**

Where a requester provides sufficient detail about the records he is seeking and the Police indicate that further records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records responsive to the request. The *Act* does not require the Police to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the Police must provide me with sufficient evidence to show that they have made a **reasonable** effort to identify and locate records responsive to the request (Orders M-282, P-458 and P-535).

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

In his request, the appellant asked for:

Part 13 – internal directives concerning management responsibility for review and audit of investigative files;

Part 15 – lesson plans used in training officers in dealing with the general public in low risk/non-violent situations;

Part 23 – lesson plans used in training members on arrest and detention procedures; and

Part 26 – records relating to the use of cellular telephones in police vehicles.

His request provided greater detail with respect to each part. In correspondence to this office, the appellant expresses incredulity in a force the size of the Police permitting young police officers to be “turned loose on the community without any follow-up supervision and guidance.”

The appellant also does not believe that the Police do not have “any training whatsoever with regard to its every day dealing with the general public.” Moreover, he points out that “arrest procedures form the very basis of police powers” and does not believe that instruction on the use of force and arrest is not provided.

Finally, he expresses doubt that the Police do not have guidelines on the use of cellular telephones by their officers.

As I indicated above, although asked to address this issue, the Police did not provide representations.

In the absence of any information on this issue from the Police, I find that they have failed to satisfy me that the search they conducted for responsive records was reasonable.

Therefore, I will order the Police to conduct a further search for responsive records relating to the above four parts of the appellant’s request and to provide the appellant with a detailed explanation of the steps taken, the locations searched, and the results of a further search. If the Police are unable to locate responsive records, they are asked to provide an explanation of why such records do not exist.

**ORDER:**

1. I order the Police to conduct a further search for records responsive to parts 13, 15, 23 and 26 of the appellant’s request and to provide the appellant with a written explanation as to the results of this further search as described above, within 20 days from the date of this order. If the appellant is not satisfied with this response, he may contact this office.
2. I order the Police to provide a copy of this letter to me within 25 days of the date of this order. This letter should be sent c/o Norma Thorney, Assistant Registrar at 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

3. I order the Police to disclose the records at issue to the appellant by providing him with a copy of them by **May 14, 2003**.
4. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the material disclosed to the appellants in accordance with Provision 3.

Original Signed By: \_\_\_\_\_ April 24, 2003  
Laurel Cropley  
Adjudicator