



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

ORDER MO-1691

Appeal MA-030012-1

City of Toronto



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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

. . . agendas and minutes (if not minutes then the orders or directions from these meetings), from planning meetings for dealing with the Oct. 16/01, OCAP protest. Instructions given to City staff for that event. As well as, any correspondence between the Toronto police Dept. regarding this event and the City of Toronto. Sometimes referred to as Project 8G.

The City located one responsive record entitled “Security Plan” dated October 16, 2001 and denied access to it on the basis that it was exempt from disclosure under the discretionary exemptions in sections 8(1)(e) (endanger life or safety) and 8(1)(i) (security of a building) of the *Act*.

The requester, now the appellant, appealed the City’s decision. In his letter of appeal, the appellant also indicated his belief that additional records ought to exist.

Mediation of the appeal was not successful and the matter was moved to the adjudication stage of the process. I decided to seek the representations of the City initially, as it bears the onus of demonstrating that the identified record is exempt under the *Act* and that the searches which it conducted were reasonable. The City made representations, the non-confidential portions of which were shared with the appellant, along with a copy of the Notice of Inquiry. The appellant also made submissions in response to the Notice.

RECORDS:

The sole record identified by the City is a three-page document dated October 16, 2001 entitled “Security Plan”.

DISCUSSION:

ENDANGER LIFE OR SAFETY/SECURITY

The City takes the position that the record which it has identified as responsive to the request is exempt from disclosure under sections 8(1)(e) and (i) of the *Act*. These sections state:

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

- (e) endanger the life or physical safety of a law enforcement officer or any other person;

- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required

Introduction

Section 8 of the *Act* requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason. An institution relying on the section 8 exemption bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm(s) by virtue of section 42 of the *Act*. [Order P-188]

The requirement in Order 188 that the expectation of harm must be “based on reason” means that there must be some logical connection between disclosure and the potential harm which the institution seeks to avoid by applying the exemption. [Order P-948]

Except in the case of section 8(1)(e), where section 8 uses the words “could reasonably be expected to”, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Goodis* (May 21, 2003), Toronto Doc. 570/02 (Ont. Div. Ct.), *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

In the case of section 8(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

Representations of the parties

The City submits that the record at issue:

. . . contains details of the City’s security plan for the protection of its staff, its facilities [including the City Hall building itself] and the general public visiting these facilities during the OCAP march. This plan is based on corporate strategy and planning required in responding to protests or demonstrations of this nature but with details specific to the OCAP October 16 demonstration.

The disclosure of the record would allow groups like OCAP to plan and select appropriate counter-measures. For example, the release of information regarding staff posting could enable demonstrators to determine where they would be most likely to meet the least resistance in any similar future demonstrations.

The City provided me with evidence that at the time the security plan was created, it was of the view that there existed a potential for violent confrontation between its security staff and the police on the one hand, and some elements in the coalition of groups leading the demonstration. It suggests that this expectation was not “fanciful, imaginary or contrived” as property was, in fact, damaged and people suffered injuries during the demonstrations which occurred on October 16, 2001. Further, the City submits that:

. . . its careful planning (as well as the police presence outside City Hall) played a major part in preventing any damage to its facilities and/or injuries to its staff and the public. The disclosure of the security plan would harm the City’s ability to do this in any future demonstrations by OCAP or other social activist groups.

The appellant refutes the evidence tendered by the City in support of its position that the security of its facilities and staff were at risk as a result of the demonstration on the day of the demonstrations. He points out that no damage occurred at City Hall and that the object of the demonstrations was to shut down Bay Street, not any facilities operated by the City. Rather, the appellant points out that the area surrounding City Hall, including Nathan Phillips Square, was simply used by the demonstrators as a “gathering point”. The appellant also suggests that the plan which comprises the subject matter of his request is now nearly two years old and is likely out of date.

My role in this inquiry is not to comment on the efficacy of the City’s security plan or to address the rationale behind its creation, as is suggested by the appellant. Rather, I am charged with making a determination as to whether the exemptions claimed in fact apply to the record.

Findings

In my view, the City has provided me with sufficient evidence to substantiate a finding that the record at issue is exempt from disclosure under section 8(1)(i). The record was created by the City’s security staff in response to the news that a demonstration was planned to begin at Nathan Phillips Square early in the morning of October 16, 2001. At the time the record was prepared, the nature and scope of the demonstration were unknown to the security staff. As a result of a violent confrontation at Queen’s Park in 2000 involving many of the same organizations, the City’s security staff felt it necessary to prepare a security plan in order to avoid the kind of problems encountered at earlier demonstrations.

Based on my review of the record itself and the representations of the City, I find that the disclosure of the City’s security plan in place for the October 16, 2001 protests could reasonably be expected to endanger the security of a building, specifically the City Hall facility, as contemplated by section 8(1)(i). The plan clearly sets out the measures put in place to ensure that City Hall was protected from damage and that no harm would come to City staff or visitors. I find that the disclosure of the information contained in the plan could reasonably be expected to jeopardize the security of this facility in the event that future demonstrations are planned and carried out. Accordingly, I find that the record is exempt from disclosure under section 8(1)(i).

REASONABLENESS OF SEARCH

In support of its position that the searches which it undertook for responsive records were reasonable, the City submits that:

. . . [it's staff person] contacted the Chief of Staff, Mayor's Office and the Manager, Security and Life Safety, Corporate Security, Facilities and Real Estate as they would have knowledge of where responsive records might be located.

The Chief of Staff conducted searches of the files in the Mayor's Office. He found only one record relating to the OCAP protest. This is a copy of the speech made by the Mayor on October 16, 2001 to the press following the demonstration and was not responsive to the request. The Chief of Staff advised that he did not recall any 'instructions' from the Mayor's office.

The Manager of Security and Life Safety searched security records and advised that there were no security occurrence reports regarding the October 16, 2001 OCAP rally. There were no breaches of security or other occurrences that day so there were no notes. He did, however, locate a security plan [the record described above] created prior to the march.

The City indicates that the Manager of Security and Life Safety conducted a further search during the mediation stage of the appeal but did not locate any additional records. During the adjudication stage of the appeal, the City's Supervisor of Building Security was contacted by the City's Freedom of Information Co-ordinator seeking additional information about the circumstances surrounding the creation of the record. The Supervisor indicated that he prepared the security plan after reading about the planned demonstration in the newspaper. He also had a telephone conversation with staff at the Toronto Police but did not make any notes of that call. The Supervisor states that the identified record was kept at the security desk while the demonstration took place and was then removed by the Supervisor. No other records were prepared or distributed to staff.

The appellant takes the position that, in addition to the security plan identified by the City, notes taken by security officers ought to exist. He also suggests that records of communications involving the Mayor's office and the Toronto Police were not identified. In his request, the appellant sets forth the records he is seeking as follows:

The requested records are the agendas and minutes (if not minutes then the orders or directions from these meetings) from planning meetings for dealing with the Oct. 16/01, OCAP protest. As well as, any correspondence between the Toronto police Dept. regarding this event and the City of Toronto. Sometimes referred to as Project 8G. Make sure to check with the Mayor's office.

I note that the request is not sufficiently broad as to include reference to any notes taken by security officers at the time of the demonstration but, rather, is focussed on the City's preparations prior to the October 16, 2001 protests. I find that the City properly interpreted the request to include only those records which address its pre-demonstration planning process.

In his submissions, the appellant also attacks the credibility of the City's staff who provided the submissions in the course of this inquiry on the basis of certain unsubstantiated allegations of impropriety. I give these statements no credence whatsoever.

The appellant's submissions focus on what he perceives to be a "cover-up" on the part of the Toronto Police and the City with respect to their response to the October 16, 2001 demonstrations.

Based on the representations provided to me by the City describing the nature and extent of the searches made for responsive records, I conclude that the searches undertaken by the Manager of Security and Life Safety, the Supervisor of Building Security and the Mayor's Chief of Staff in response to the appellant's request were reasonable. In my view, the City made reasonable efforts to identify and locate records that were responsive to the appellant's request, as framed.

ORDER:

I uphold the City's decision to deny access to the record and find that the searches undertaken were reasonable.

Original signed by: _____
Donald Hale
Adjudicator

_____ September 24, 2003