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

ORDER MO-1672

Appeal MA-020331-1

Toronto Police Services Board

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NATURE OF THE APPEAL:

The requester made a request to the Toronto Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

> All the records pertaining to both of the July 10th, 2002 interactions at [a specified address], all records covering all of the conversations on July 10th, 2002 and any and all documents/records that pertain to these incidences [sic].

The Police identified 18 pages of records as being responsive, either wholly or in part, to the request. These records consist of entries in two police officers' notebooks, a "Record of Arrest," a "Supplementary Record of Arrest" and two "Event Details Reports."

The Police initially issued a decision letter to the requester granting partial access to the records. The Police denied access to portions of the records on the basis that they qualified for exemption under section 38(a) (discretion to refuse requester's own information) in conjunction with section 8(1)(l) (facilitate commission of an unlawful act or hamper the control of crime), and section 38(b) (invasion of privacy) with specific reference to section 14(3)(b) (compiled and identifiable as part of an investigation into a possible violation of law). The Police also indicated that they had severed portions of the police officers' notebooks on the basis that they were not responsive to the request.

The requester (now the appellant) appealed the Police's decision to deny access.

During mediation, the appellant indicated that she was not pursuing access to the non-responsive portions of the police officers' notes, and the parties agreed that pages 1 and 5 are no longer at issue in this appeal.

Also during mediation, the Police issued a revised decision and claimed section 38(a) in conjunction with section 8(1)(l) for portions of pages 14 and 18 that they had originally claimed were not responsive to the request. In addition, the Police decided to disclose to the appellant additional information on pages 6, 12, and 16.

Mediation did not resolve this appeal, and the file was transferred to adjudication. This office sent a Notice of Inquiry to the Police, initially, outlining the facts and issues and inviting the Police to make written representations. The Police submitted representations in response to the Notice. This office then sent a Notice of Inquiry to the appellant, together with a copy of the non-confidential portions of the Police's representations. The appellant provided brief representations in response, stating that "My only goal is to obtain all the personal information as per the definition in [the *Act*] pertaining to me."

In this appeal I must decide whether the exemptions claimed by the Police apply to the records.

RECORDS:

Of the 18 pages of records initially identified by the Police, nine remain at issue. They are the undisclosed portions of the following pages: two police officers' notebook entries (Pages 2-4 and Page 6, respectively); a "Record of Arrest" (Page 8); a "Supplementary Record of Arrest" (Page 10); and two "Event Details Reports" (Pages 12, 14 and Pages 15, 16, 18).

BRIEF CONCLUSION:

For the reasons set out in this order, I find that the records are exempt from disclosure under sections 38(a) and 38(b) of the *Act*.

DISCUSSION:

PERSONAL INFORMATION

The first issue I must decide is whether the records contain personal information, and if so, whose.

Under 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 if 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 (section 2(1)(h)).

The Police submit:

> The personal information contained within the records includes the names, dates of birth, telephone numbers, addresses and officer's comments about, as well as comments made by, individuals other than the appellant.

In claiming section 38(b) of the *Act*, which applies to information relating to the appellant, the Police also raise as an issue whether the records contain the appellant's personal information.

I find that all the pages at issue contain the personal information of both the appellant and other individuals. All the pages relate to incidents occurring on July 10, 2002 involving the appellant and these other individuals. The personal information includes the names, addresses, telephone numbers and age, as well as other personal information, of these individuals.

LAW ENFORCEMENT

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from disclosure that limit this general right.

The Police have claimed section 38(a) in conjunction with section 8(1)(l) to deny access to some of the information in the records. These sections read:

> 38. A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (a) if section 6, 7, **8,** 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information;
>
> 8. (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

Under section 38(a), where a record relates to the requester but section 8 (law enforcement) would apply to the disclosure of personal information in the record, the institution may refuse to disclose that personal information to the requester.

Because section 38(a) is a discretionary exemption, even if the information falls within the scope of this section, the institution must nevertheless consider whether to disclose the information to the requester.

The Police rely on sections 38(a) and 8(1)(l) to support their denial of access to:

- "ten-codes" appearing in the officers' notes (Pages 3 and 4); and
- ORI Numbers in the "Event Details Reports" (Pages 14 and 18).

"Ten-codes" are used by OPP officers in their radio communications with each other. The Police submit that ten-codes provide law enforcement with "an effective and efficient means of conveying a specific message without publicly identifying its true meaning," and that divulging the codes would compromise their effectiveness. They contend that revealing the codes could enable those engaged in criminal activity to circumvent police detection or prevent police from responding to situations, thereby posing a risk of harm to the police and the public. The Police also state that disclosing the codes could enable those engaged in criminal activity to hamper the control of crime by monitoring police radio transmissions to determine when the police do not have any available officers. Finally, the Police submit that disclosing the ten-codes in the context of the records at issue in this case could easily reveal their meaning, thereby compromising the security of those codes.

This office has consistently found that section 8(1)(l) applies to "ten-codes" (for example, Orders M-393, M-757, PO-1665). Based on these earlier orders and my review of the records and the Police's representations, I find that disclosing the ten-codes at issue could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. As

Adjudicator Laurel Cropley stated in Order PO-1665, "disclosure of the 'ten-codes' would leave … officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of … officers who communicate with each other on publicly accessible radio transmission space." I therefore find that the ten-codes qualify for exemption under section 8(1)(l).

"ORI Numbers" are also known as "CPIC access codes." The Police submit that "the release of transmission access codes for the CPIC system could facilitate the commission of an unlawful act or hamper the control of crime."

Previous orders of this office have found ORI Numbers to qualify for exemption under section 8(1)(l) (for example, Orders M-933, MO-1335, MO-1428). In Order MO-1335, Senior Adjudicator David Goodis stated that "Where information could be used by any individual to gain unauthorized access to the CPIC database, an important law enforcement tool, it should be considered exempt under section 8(1)(l)." As in these previous orders, I find that disclosing the ORI Numbers in this appeal could reasonably be expected to facilitate the commission of an unlawful act. Accordingly, the ORI Numbers qualify for exemption under section 8(1)(l).

INVASION OF PRIVACY

The Police rely on section 38(b) in conjunction with section 14 to support their denial of access to the remaining information at issue (the undisclosed portions of Pages 2-4, 6, 8, 10, 12 and 15-16).

More specifically, the Police rely on the "presumed unjustified invasion of personal privacy" at section 14(3)(b) and the factors favouring privacy protection at sections 14(2)(e) and (h). These sections read:

> 38. A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
>
> 14(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; …

> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (b) 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;

As noted above, section 38 provides a number exemptions from disclosure that limit the general right of access under section 36(1) to one's own personal information held by an institution.

Under section 38(b), where a record relates to the requester but disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution may refuse to disclose that information to the requester.

Like section 38(a), section 38(b) is a discretionary exemption. Even if the requirements of section 38(b) are met, the institution must nevertheless consider whether to disclose the information to the requester. In this case, section 38(b) requires the Police to exercise their discretion in this regard by balancing the appellant's right of access to her own personal information against other individuals' right to the protection of their privacy.

Sections 14(1) through (4) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of an individual's personal privacy under section 38(b). Sections 14(1)(a) through (e) provide exceptions to the personal privacy exemption; if any of these exceptions apply, the information cannot be exempt from disclosure under section 38(b).

Section 14(2) provides some criteria for determining whether the personal privacy exemption applies. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the "compelling public interest" override at section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767].

If none of the presumptions in section 14(3) applies, the institution must consider the factors listed in section 14(2), as well as all other relevant circumstances.

Based on my review of the records, I have concluded that none of the exceptions at sections 14(1)(a) through (e) applies in this case.

With respect to the section 14(3)(b) presumption, the Police submit:

> In this instance, the police responded to a complaint of an assault, a criminal code offence. Whether or not criminal charges were ever laid in relation to this incident, does not negate the applicability of this section.

In order for section 14(3)(b) to apply, the information must have been compiled and must be identifiable as part of an investigation into a possible violation of law.

I have reviewed the records. The two sets of police officers' notes were created when the officers responded to incidents that occurred on July 10, 2002. Similarly, the "Record of Arrest" and "Supplementary Record of Arrest" document an arrest on that date arising from these incidents. The two "Event Details Reports" contain information about telephone calls made to the police. These records were all clearly compiled as part of an investigation into a possible violation of law, and I am satisfied that they fall within the section 14(3)(b) presumption. The presumption is not rebutted by section 14(4) or the "compelling public interest" override at section 16, which was not raised in this case. I therefore find that disclosing the information would constitute an unjustified invasion of personal privacy under section 38(b).

SEVERANCE

Section 4(2) of the *Act* requires the Police to disclose as much of any responsive record as can reasonably be severed without disclosing information that is exempt from disclosure. I am satisfied that in the circumstances, the Police have made a reasonable effort to sever the records and they have disclosed as much information to the appellant as possible.

POLICE'S EXERCISE OF DISCRETION

Where appropriate, institutions have the discretion under the *Act* to disclose information even if it qualifies for exemption under any of the *Act*'s discretionary exemptions.

Because sections 38(a) and 38(b) are discretionary exemptions, I must also review the Police's exercise of discretion in deciding to withhold the information. The Police have made representations on this issue for both sections 38(a) and 38(b), including representations which, because of their confidential nature, I am not at liberty to disclose in this order.

I find that the Police properly exercised their discretion in refusing to disclose the information at issue under both sections 38(a) and 38(b) in this case. They took into account and appropriately balanced relevant considerations, including the appellant's right of access, the interests section 8(1)(l) seeks to protect, and other individuals' right to privacy. The Police provided the appellant with partial access to the information she requested, and they disclosed additional information during mediation conducted by this office. I am satisfied that they properly exercised their discretion in withholding the remaining information.

ORDER:

I uphold the Police's decision.

Original signed by
Shirley Senoff
Adjudicator

July 30, 2003