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

ORDER MO-1747

Appeal MA-020247-1

Hamilton Police Services Board

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NATURE OF THE APPEAL:

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

1. P.37 & P. 38 (Record of Arrest) from H.W.D.C. [Hamilton Wentworth Detention Centre] files

2. Copy of Bail Opposition Form, [specified occurrence number - "Occurrence #3"]

3. [specified occurrence number - "Occurrence #1"] (included with Crown Disclosure)

4. [specified occurrence number - "Occurrence #2] investigation and all notes from each investigating officer

5. Copy of Complete Crown Disclosure

6. Copy of Senior Physician Letter entered as Exhibit #1 at Plea Court Hearing on [a specified date]

7. All notes from [a named officer] regarding April 14/2000 incident and Sept./2000 incident

8. 911 transcript from April 14th/2000 incident

9. Any notes from [a second named officer] regarding April 14/2000 incident

10. Any notes, complaints, or reports regarding myself … from Dec.22nd/2000

11. Notes from morning meeting Sept.7th/2000 7:20 a.m. with [the first named officer]

The Police issued a decision letter to the requester granting partial access to the records. The Police denied access to portions of the records, relying on the following discretionary exemptions in the *Act*:

- section 38(a) (discretion to refuse requester's own information) in conjunction with sections 8(1)(c), 8(1)(e), 8(2)(a) and 8(2)(c) (law enforcement); and

- section 38(b) (invasion of privacy) in conjunction with sections 14(2)(e), (f), (g), (h) and (i) and sections 14(3)(b), (d) and (g) (various criteria and presumptions for identifying an invasion of privacy).

In addition, the Police withheld certain information on the basis that it was not responsive to the request. The Police also took the position that some of the requested records do not exist, and that one record (a 911 transcript) had been purged pursuant to the Police's Records Retention By-law.

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

Prior to mediation, this office decided that there was no reasonable basis for proceeding with the appellant's appeal regarding 911 transcripts. Part 8 of the appellant's request is therefore not at issue in this appeal.

During mediation, the appellant indicated that he was not pursuing access to the non-responsive information. Also during mediation, the Police decided to disclose certain additional information (a two-page record of arrest) to the appellant.

The scope of the appellant's request became an issue during mediation. The appellant takes the position that certain witness statements form part of his request, but the Police disagree on the basis that the appellant requested his own personal information only.

Whether the Police conducted a reasonable search for certain additional records is also in issue. In particular, the appellant believes the following records exist: records dated after December 22, 2000 relating to him, and notes he believes were made by the first named officer after their meeting on the morning of September 7, 2000.

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 in the appeal 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, in turn, provided representations. Both parties' representations contain confidential submissions that I am not at liberty to disclose in this order.

RECORDS:

Approximately 63 pages of records remain at issue, in whole or in part. They include bail records, occurrence reports, police officers' notebook entries, victim impact statements, witness statements, correspondence and other records. All page references in this order correspond to the numbering system used by the Police.

DISCUSSION:

PRELIMINARY MATTERS

Information Obtained Outside the *Act*

There is some suggestion in the materials before me that the appellant may have obtained access to some of the information at issue through avenues outside the *Act*, such as the Crown disclosure process in criminal proceedings. Based upon the particular circumstances of this case, including the parties' confidential representations, I have decided to review the exemption claims made by the Police with respect to all the records at issue, regardless of whether the appellant may have obtained access to some of the records outside the *Act*.

Duplicate Records

Pages 60-63 are duplicates of pages 1-4. For simplicity's sake, I will only be dealing with pages 1-4 in this order.

SCOPE OF THE REQUEST

As noted above, the appellant takes the position that certain witness statements form part of his request, but the Police disagree.

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in a request should be resolved in the requester's favour (Orders P-134, P-880).

Previous orders of this office have established that in order for a record to be responsive, it must be "reasonably related" to the request (for example, Order P-880).

The Police submit that upon receiving the appellant's request, they attempted to clarify the scope of the request with him. After speaking with him, they had understood he was only interested in obtaining access to his own personal information. The Police also indicate that their office's standard Freedom of Information Request Form – which is completed by requesters making requests under the *Act* – includes the question, "Do you require only your own personal information?" The appellant in this case had answered "Yes" to this question.

The Police submit that during the course of mediation conducted by this office, the appellant sought to amend his original request to include a request for witness statements relating to Occurrence #1 and Occurrence #2. The Police advised the appellant that they would not amend his original request because they had already issued their decision in connection with it, but that they would treat his request for these witness statements as a new and separate request. The Police submit that they did not process this new request because the appellant did not pay the $5 fee prescribed by the *Act*.

The appellant believes that the witness statements he seeks are responsive to the fifth part of his request ("Copy of Complete Crown Disclosure"). He submits that parts 1-4, 6-9 and 11 of his request were "very specific requests from the legal process of my criminal case," and that part 5 encompasses witness statements. The appellant disputes the Police's submission that they attempted to clarify his request. In response to the Police's submission that his request did not include witness statements because he was only seeking his own personal information, the

appellant states that "[a] Crown Disclosure where I am the accused is my personal information." He notes that the Police made an access decision with respect to certain victim impact statements even though he did not specifically ask for them.

I would note at the outset that the records before me include victim impact statements and witness statements relating to Occurrence #3 (pages 35-37 and 40-53). They do not appear to include any witness statements relating specifically to Occurrence #1 and Occurrence #2. Based on the materials before me, I do not know whether any witness statements relating to Occurrence #1 and Occurrence #2 exist. The appellant believes such records do exist, and the Police do not appear to disagree. Rather, the Police assert that the witness statements are not responsive to the appellant's request. In any event, the issue I must decide is whether the appellant's request includes any witness statements relating to Occurrence #1 and Occurrence #2.

I wish to address the Police's submission that the witness statements in question (assuming they exist) do not respond to the appellant's request because he is only seeking access to his own personal information. Any given record may include the personal information of one or more individuals. In the circumstances of this case – and without making any finding on this point – I would expect that the witness statements would include the personal information of both the appellant and other individuals; the Police themselves acknowledge this fact in their representations. Treating any such records as falling outside the scope of the appellant's request, simply because they contain the personal information of other individuals besides the appellant, would be reading the request too narrowly. Rather, it is reasonable to conclude that in answering "Yes" to the question, "Do you require only your own personal information?", the appellant was expressing his wish to obtain access to all information relating to him.

I have reviewed the appellant's request and the parties' representations. The appellant's original request did not specify that he was seeking access to witness statements. The Police have identified certain witness statements relating to Occurrence #3 as being responsive records. The Police do not indicate why they decided these witness statements were responsive, but that any witness statements relating to Occurrence #1 and Occurrence #2 were not responsive.

I find that in the circumstances of this case, any witness statements relating to Occurrence #1 and Occurrence #2 would be "reasonably related" to the appellant's request. In my view, the appellant intended to request all records relating to him in connection with the three specified occurrences.

Because the Police took the position that the appellant's request did not encompass witness statements relating to Occurrence #1 and Occurrence #2, they have not yet made an access decision with respect to any such records. I am mindful of the time that has passed since the appellant made his original request. In the circumstances, I will order the Police to make a final access decision for any such records in accordance with the *Act*, without recourse to a time extension and without charging any fees associated with processing the request.

Finally, the Police appear to have responded to part 10 of the appellant's request ("Any notes, complaints, or reports regarding myself … from Dec.22nd/2000") on the basis that it is restricted

to records dated December 22, 2000. In his representations the appellant takes the position that this part of his request also includes records "dated after December 22, 2000." In my view, the words "from Dec. 22nd/2000" were intended to encompass records spanning the time period between December 22, 2000 and the date of the appellant's original request, inclusive.

REASONABLE SEARCH

The appellant believes that records relating to parts 6, 10 and 11 of his request exist.

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 (Orders P-85, P-221, PO-1954-I).

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. The institution must, however, provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records (Order P-624).

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

In this case, if I am satisfied that the Police's search was reasonable in the circumstances, I will uphold the Police's decision. If I am not satisfied, I may order the Police to conduct further searches.

The Police's Freedom of Information Coordinator submits:

> … I spoke to [the first named officer] relating to a meeting and notes from a meeting on September 7th 2000 at 7:20 a.m. (item 11) and he advised that he had no notes from that day. I also conducted a records check for any notes, complaints, reports regarding the appellant from December 22nd 2000 (item 10). I checked the Records Branch, our internal records management system, the appellant's criminal record, our log of calls from that specific date and our Professional Standards Branch and there were no records of anything relating to the appellant. The only thing that I found with that date was from the appellant's request that stated he wanted a copy of the Senior Physician Letter entered as Exhibit #1 at the Plea Court Hearing … (item 6). This information led me to believe that the appellant wanted information from the Plea Court Hearing. There was not a copy of the Senior Physician's letter in the crown brief and since it was submitted as an exhibit it should be with the courts. Anything else from the Plea Court Hearing may also be with the courts. There is nothing else located at the [Police] relating to the Plea Court Hearing or anything else on December 22nd 2000.
>
> …

> … I spoke to [the first named officer] relating to item 11 and he advised that he had no notes. I also searched for records relating to item 10 and again no record exists.
>
> During this [inquiry] I conducted a further search for records and sent a memorandum to [the first named officer] for his notes relating to a meeting on September 7th 2000 at approximately 7:20 a.m. as well as notes relating to the … Plea Hearing.
>
> I viewed his notebook and he did not have any notes from September 7, 2000 nor December 22, 2000. I also asked [the first named officer] if he recalled a meeting on September 7th at 7:20 a.m. and he advised he did not. His notebook indicates that he was sent to a stolen auto call at 0730 hrs. on that morning. I then asked him if he recalled the … Plea Hearing and he said that even if he were there which he could not recall, he would not have taken notes.
>
> I once again checked our records management system for any files, notes or complaints relating to the appellant for the date of December 22nd 2000 and no records were located.
>
> The [Police feel] that all the searches were conducted properly and thoroughly by the Freedom of Information Coordinator who is an experienced employee of the [Police]. As indicated, no further records existed.

The appellant submits that the court, the Attorney General's office and the [Police] have all advised him that they are not in possession of the Senior Physician's letter entered as Exhibit #1 at the Plea Court Hearing (part 6 of his request).

The appellant also provides a detailed chronology of events in support of his contention that notes regarding a meeting on September 7, 2000 exist. He maintains that a brief meeting between him and the first named officer took place on that date and that supporting documents must exist.

First, there appears to be some confusion about the Senior Physician's letter described in part 6 of the appellant's request. In fact, this letter appears to be one of the records before me (page 33). Accordingly, I will review the Police's decision to deny access to this record, below.

Secondly, I am satisfied that the searches conducted by the Police for notes from a September 7, 2000 meeting were reasonable. As noted above, the Police are not required to prove with absolute certainty that any such records do not exist. Rather, they must satisfy me that their searches for these records were reasonable. The Police have provided detailed representations on the searches they conducted. They searched a number of appropriate locations and contacted appropriate individuals who might have possession or knowledge of such records. The Police's Freedom of Information Coordinator spoke with the first named officer and personally reviewed

his notebook. In the circumstances, the Police have done all they reasonably can to locate these records. I will therefore dismiss this part of the appellant's appeal.

Finally, the Police interpreted the scope of part 10 of the appellant's request as being restricted to records dated December 22, 2000, and they similarly restricted their search for responsive records on that basis. I found, above, that part 10 encompasses records spanning the time period between December 22, 2000 and the date of the appellant's original request, inclusive. In the circumstances, I will order the Police to conduct a search for records covering this latter time period. If the Police identify any responsive records, I will order them to provide the appellant with a decision letter regarding access to these records in accordance with sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request, without recourse to a time extension.

PERSONAL INFORMATION

I must now decide 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 age (section 2(1)(a)), education or medical, psychiatric, psychological, criminal or employment history (section 2(1)(b)) or address (section 2(1)(d)), or 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 information which forms part of this investigative report is clearly personal information as defined in [section 2(1) of the *Act*], in that it is information about identifiable individuals, including, but not limited to, the appellant, the complainant and other affected individuals.
>
> The information includes names, addresses and date of birth. The personal information also includes personal opinions and views of individuals interviewed about other individuals named. There is information relating to criminal allegations and statements relating to these allegations. The names of individuals appear in conjunction with other personal information relating to both that person and to others. Parts of the information at issue are highly sensitive and inherently personal information.
>
> The information includes information obtained from persons contacted by police. This information is thus "personal information" as defined by the *Act*.

The appellant does not make representations on this issue.

I have reviewed the records and I find that with the exception of pages 28-34 and 67, they all contain the personal information of both the appellant and other individuals, including their name, address, age and other personal information.

I find that pages 28-34 and 67 contain only the appellant's personal information.

INVASION OF PRIVACY

I will next review whether any of the records containing the personal information of both the appellant and other individuals qualify for exemption under section 38(b).

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 rely on section 38(b) in conjunction with section 14 to support their denial of access to the records. More specifically, in their representations the Police rely on the "presumed unjustified invasion of personal privacy" at sections 14(3)(b), (d) and (g) and the factors favouring privacy protection at sections 14(2)(e), (f), (h) and (i). 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;
>
> (f) the personal information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
>
> (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;
>
> (d) relates to employment or educational history;
>
> (g) consists of personal recommendations or evaluations, character references or personnel evaluations; …

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.

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 his 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.

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, among other things:

> The records at issue were compiled and are identifiable as part of an investigation into a possible violation of law. … The investigations were conducted and the reports submitted.

The Police submit that the section 14(3)(g) presumption applies to the bail opposition report (pages 1-4). They submit that it is "a highly sensitive document prepared for the Crown in order to have the accused held in custody. The document goes into great detail, gives background information and provides opinions of the officer in charge of the case."

With respect to section 14(2)(e), the Police submit, among things, that "to release information relating to or obtained from affected individuals to the appellant could expose those individuals to harm."

With respect to section 14(2)(f), the Police submit that the information at issue is "highly personal and sensitive."

The appellant submits that disclosing the information at issue would not constitute an invasion of privacy. He submits that some of the individuals identified in the records gave up their privacy rights in earlier proceedings.

The purpose of section 38(b) is to protect the personal privacy of individuals other than the requester (here, the appellant). Pages 6, 10, 13-14, 18, 22-25, 38 and 66 contain information about identifiable individuals that the appellant himself provided to the Police, or that he would clearly already know. Barring exceptional circumstances, withholding information in the records that was supplied by the appellant or that he would already know would not serve the purpose of section 38(b). In the language of previous orders, doing so would produce an "absurd result" (for example, Orders M-444, MO-1561). This conclusion makes it unnecessary to undertake an invasion of privacy analysis under section 38(b) for certain information on pages 6, 10, 13-14, 18, 22-25, 38 and 66, and I will order the Police to disclose this information (Order MO-1680).

For certain other information in the records, however, the Police have met the requirements of section 38(b).

First, excluding the information to which I applied the "absurd result" principle, I find that the information remaining at issue on pages 2-6, 9-18, 21-23, 25-26, 40-53, 55, 57-59, 64-65 and 68-70 was compiled and is identifiable as part of an investigation into a possible violation of law, thereby triggering the presumption of an unjustified invasion of privacy at section 14(3)(b). The other individuals involved cannot be taken to have waived their privacy rights under the *Act*. The section 14(3)(b) presumption is not rebutted by section 14(4) or the "public interest override" at section 16, which was not raised in this case. This information therefore qualifies for exemption under section 38(b).

Secondly, with respect to the remaining records containing the personal information of both the appellant and other individuals (pages 1, 24, 35-37, 54 and 66), I find that none of the presumptions in section 14(3) applies to the information still at issue in those records. Some of

this information, however, is highly sensitive, such that section 14(2)(f) applies. In order for information to be considered highly sensitive, it must be found that its disclosure could reasonably be expected to cause an individual excessive personal distress (Orders M-1053, P-1681 and PO-1736). Section 14(2)(f) is not outweighed by any factors favouring disclosure in this case. Specifically, I find that the following information qualifies for exemption under section 38(b) in conjunction with section 14(2)(f): portions of page 1, and the information at issue on pages 35-37 and 54.

Page 1 also contains personal information that relates exclusively to the appellant. Disclosing this information would not result in an unjustified invasion of another individual's privacy and the information therefore does not qualify for exemption under section 38(b).

To summarize, I find that some information on the following pages qualifies for exemption under section 38(b), in conjunction with either section 14(3)(b) or section 14(2)(f): pages 1-6, 9-18, 21-23, 25-26, 35-37, 40-55, 57-59, 64-65 and 68-70. In addition, I am satisfied that the Police did not err in exercising their discretion to withhold this information.

I am enclosing with the copy of this order being sent to the Police a copy of the records highlighting those portions that the Police must **not** disclose.

LAW ENFORCEMENT

I will now review whether the remaining information qualifies for the law enforcement exemption in conjunction with section 38(a). This information consists of: those portions of page 1 that I found not to be exempt under section 38(b); pages 28-34 and 67 in their entirety, which I found to contain only the appellant's personal information; and the "ten-codes" on pages 22, 24 and 68.

The Police initially claimed section 38(a) in conjunction with sections 8(1)(c), 8(1)(e), 8(2)(a) and 8(2)(c) to support their denial of access to this information. In their representations, the Police withdraw their section 8(1)(c) and section 8(2)(c) claims and rely only on sections 8(1)(e) and 8(2)(a). The Police also indirectly claim section 8(1)(l) for the "ten-codes" 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,
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;

> (l) facilitate the commission of an unlawful act or hamper the control of crime.
>
> (2) A head may refuse to disclose a record,
>
> (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

As noted above, section 38 provides a number of 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(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.

Like section 38(b), section 38(a) is a discretionary exemption. Even if the requirements of section 38(a) are met, the institution must nevertheless consider whether to disclose the information to the requester.

With respect to section 8(1)(e), the Police submit, among other things:

> … disclosure of [the records] could reasonably be expected to be injurious to the interest of personal safety of the affected individuals. … the affected persons or any persons thought to be associated to the records will be subjected to further harassment and/or harm physical or otherwise, if the information is released.

With respect to section 8(2)(a), the Police submit:

> In accordance with the provisions of section 42 of the *Police Services Act*, the [Police are] a law enforcement agency, which has the function of enforcing and regulating compliance with the law. In the performance of these duties, and in accordance with internal Police Service Policies, Procedures and Regulations, police officers are required to complete reports when conducting law enforcement investigations. These reports, which generally take the form of occurrence reports, are for the purpose of documenting information obtained during the course of an investigation and, where required, to provide for effective follow-up. In addition, these reports may be used to assist the Crown Attorney in trial preparation.
>
> All reports in this case were prepared by police officers in the context of investigating what are potentially criminal allegations. The Crown Attorney in

> fact used these reports. These records were, thus, clearly prepared in the course of law enforcement.
>
> In accordance with Order 200, to be a report, a record must consist of a formal statement or account of the results, not merely observations or recordings of fact. The records in this case include a compilation of officers' interviews, interspersed with officers' comments, notations, interpretations and opinions, as well as summaries, recommendations and potential follow-up information. As such, the information constitutes a report as defined in the *Act*.

The Police indirectly make representations on section 8(1)(l) in support of their decision to deny access to the "ten-codes" in the records. They submit that they need to maintain the integrity of information and evidence compiled during an investigation, and that disclosing this information will affect their ability to conduct investigations.

With respect to section 8(1)(e), the appellant submits that the issue of risk was dealt with in an earlier court hearing. He also provides documentation to support his position that section 8(1)(e) does not apply.

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context (*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)).

The word "report" means "a formal statement or account of the results of the collation and consideration of information." Results would generally not include mere observations or recordings of fact (Orders P-200, MO-1238, MO-1337-I). While it may be relevant, the title of a document is not determinative of whether it is a report (Order MO-1337-I).

The records at issue consist of correspondence, notes and administrative documents. I find that none of the records at issue qualifies for exemption under section 8(2)(a) because they are not "reports" within the meaning of that section.

In order for section 8(1)(e) to apply, 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.)).

I find that most of the records at issue do not qualify for exemption under section 8(1)(e). For certain portions of pages 28 and 34, however, the Police have met the requirements of that section. The remaining portions of pages 28 and 34 do not qualify for exemption under section 8(1)(e).

This office has consistently found that section 8(1)(l) applies to "ten-codes," which are used by police officers in their radio communications with each other (for example, Orders M-393, M-

757, PO-1665). Based on these earlier orders, I find that the ten-codes on pages 22, 24 and 68 qualify for exemption under section 8(1)(l).

Thus, I find that portions of pages 28 and 34 qualify for exemption under section 38(a) in conjunction with section 8(1)(e), and that the ten-codes on pages 22, 24 and 68 qualify for exemption under section 38(a) in conjunction with section 8(1)(l). I also find that the Police did not err in exercising their discretion to withhold this information. The highlighted copy of the records being sent to the Police will identify which portions they must **not** disclose. I will order the Police to disclose the remaining information.

ORDER:

1. I order the Police to provide the appellant with a final access decision for any witness statements relating to Occurrence #1 and Occurrence #2, in accordance with the provisions of sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request, without recourse to a time extension and without charging any fees associated with processing the request.

2. I dismiss the part of the appellant's appeal regarding the Police's search for notes from a September 7, 2000 meeting.

3. I order the Police to conduct a search for records responsive to part 10 of the appellant's request. The Police must search for records spanning the time period between December 22, 2000 and the date of the appellant's original request, inclusive.

4. I order the Police to communicate the results of their search to the appellant, in writing, on or before **March 1, 2004**.

5. If the Police identify any records responsive to part 10 of the appellant's request, I order them to provide the appellant with a decision letter regarding access to these records in accordance with sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request, without recourse to a time extension.

6. I order the Police to provide me with copies of the correspondence referred to in Provisions 4 and 5, as applicable, by sending a copy to me when they send this correspondence to the appellant.

7. I uphold the Police's decision to deny access to the following pages in their entirety because they are exempt under section 38(b): 2-4, 16-17, 35-37, 40-53, 58-59, 64-65 and 70.

8. I uphold the Police's decision to deny access to the portions of the following pages that are exempt under section 38(b): 1, 5-6, 9-15, 18, 21-23, 25-26, 54-55, 57 and 68-69.

9. I uphold the Police's decision to deny access to the portions of the following pages that are exempt under section 38(a): 22, 24, 28, 34 and 68.

10. I order the Police to disclose pages 29-33, 38, 66 and 67 in their entirety to the appellant by **February 20, 2004**.

11. I order the Police to disclose to the appellant the information on pages 1, 6, 10, 13-14, 18, 22-25, 28 and 34 that is not exempt, by **February 20, 2004**. I am providing the Police with a highlighted version of pages 1, 6, 10, 13-14, 18, 22-25, 28-34, 38, 66 and 67 with this order, identifying the portions that they must **not** disclose. The Police must disclose the information on these pages that I have not highlighted.

12. In order to verify compliance with the terms of Provisions 10 and 11, I reserve the right to require the Police to provide me with a copy of the records that are disclosed to the appellant.

Original Signed By: January 30, 2004
Shirley Senoff
Adjudicator