



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1826

Appeal MA-030408-1

Town of Carleton Place



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NATURE OF THE APPEAL:

The requester, a journalist, made a request to the Town of Carleton Place (the Town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information about a non-profit organization that previously held a bingo license, including the organization's license application and reports to the Alcohol and Gaming Commission of Ontario (the AGCO).

The Town issued a decision to the requester denying access to the records, relying on the exemptions at sections 8 (law enforcement) and 10 (third party information).

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

The Town subsequently provided this office with a letter from the AGCO indicating that the Ontario Provincial Police (the OPP) were conducting an investigation on behalf of the AGCO into the activities of the non-profit organization.

During mediation, the parties removed certain information from the scope of the appeal.

Mediation did not resolve this appeal, and the file was transferred to adjudication. I sent a Notice of Inquiry to the Town and the AGCO, initially, outlining the facts and issues and inviting them to make written representations on section 8 only. The Town and the AGCO submitted representations in response to the Notice. I then sent a Notice of Inquiry to the appellant, together with a copy of the representations of the Town and the AGCO. The appellant, in turn, provided representations.

RECORDS:

Approximately 576 pages of records remain at issue. They include correspondence, lottery licences, applications and reports.

BRIEF CONCLUSION:

The records are exempt from disclosure under section 8(1)(b).

DISCUSSION:

DOES THE LAW ENFORCEMENT EXEMPTION AT SECTION 8(1)(B) APPLY TO THE RECORDS?

I have decided to begin by reviewing whether the records qualify for exemption under the discretionary exemption at section 8(1)(b), which reads:

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

interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

General principles

Because section 8(1)(b) is a discretionary exemption, even if the information falls within the scope of this section, the institution (here, the Town) must nevertheless consider whether to disclose the information to the requester.

The term “law enforcement,” which appears in section 8(1)(b), is defined in section 2(1) of the *Act* as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

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.)).

In order for a record to qualify for exemption under section 8(1)(b), the law enforcement investigation in question must be specific and ongoing (Order MO-1578). The institution holding the records need not be the institution conducting the law enforcement matter (Order PO-2085).

In addition, 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. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)).

The parties’ representations

In its representations, the Town maintains its position that the records should not be disclosed “due to the request of the Ontario Provincial Police to not release information prior to any possible court proceedings.”

The AGCO – and more specifically a member of the OPP working with one of the AGCO’s Regional Enforcement Units – submits that the OPP are currently conducting an investigation on behalf of the AGCO into the non-profit organization’s activities. The AGCO submits that disclosing the records could result in witnesses being reluctant to testify in a criminal court proceeding. The AGCO also submits that disclosing the records could make selecting an impartial jury difficult or reveal evidence that could lead to a prejudicial trial.

The appellant submits that the records he seeks will not necessarily reveal information that is the subject of the criminal investigation. Rather, he believes they may reveal other information and that “the Town has a responsibility, under the *Act*, to be transparent and make such information available.” The appellant also submits that “[a]t present, no criminal charges have been laid in the investigation, so there is no jury to be influenced.” He further submits that if charges are laid, the trial will not begin for at least a year, and that this is “a long time for potential jurors to remember the contents of municipal documents.” Finally, the appellant submits that the trial would likely take place in a different city and that jurors are not likely to be selected from the area he serves.

Findings

I find that the records qualify for exemption under section 8(1)(b).

First, the OPP are conducting an investigation into the non-profit organization’s activities. The OPP’s investigation is specific and ongoing and it could lead to the laying of criminal charges. It is therefore “an investigation undertaken with a view to a law enforcement proceeding.”

Secondly, based on the materials before me, I find that disclosing the records could reasonably be expected to interfere with the OPP’s investigation. In particular, I am persuaded by the representations of the OPP (working on behalf of the AGCO) that disclosing the records could interfere with the OPP’s investigation in a number of specific ways, as outlined above.

I have considered whether it is possible to sever and disclose certain portions of the records to the appellant. Section 4(2) of the *Act* requires institutions to disclose as much of any responsive record as can reasonably be severed without disclosing information that is exempt from disclosure. I find that in the specific circumstances of this law enforcement investigation, severing the records is not feasible (see *Ontario (Attorney General) v. Fineberg*, cited above; see also Order PO-2040).

Accordingly, the records qualify for exemption under section 8(1)(b). In addition, I am satisfied that the Town did not err in exercising its discretion to withhold the records.

Because the records are exempt under section 8(1)(b), it is not necessary for me to review the Town’s section 10 claim.

ORDER:

I uphold the Town's decision.

Original Signed By: _____
Shirley Senoff
Adjudicator

_____ August 31, 2004