



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1975

Appeal MA-040231-1

Toronto Police Services Board



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

On May 28, 2004, 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:

1. Full and complete criminal and City by-law offence records since January 30, 2000 to May 28, 2004.
2. Full and complete record that I [requester's name] call [sic] 911 or 416-808-4200 since January 30, 2000 to May 28, 2004.
3. Full and complete record that I [requester's name] was [sic] complained since January 30, 2000 to May 28, 2004.
4. The statistical result of Toronto Metro Police react [sic] time to 911 call (How long will it take for police to come to the [scene] after 911 call?)

In response to a telephone call from the Police, which appears to have been an effort by the Police to clarify the request, the requester sent a letter dated June 23, 2004 to their Freedom of Information Co-ordinator in which he states:

I appreciate your call back at about 9:40 am June 10, 2004 to my correspondence dated June 7, 2004 regarding my request for information under the [Act] on May 28, 2004.

It would be noted my first request was on May 28, 2004. During the conversation, you promised that I would get a segment of the information pertaining to my 911 calls and to my 416-808-4200 calls since Jan. 30, 2000 by June 14, 2004.

The other three requests are:

1. Full and completed [sic] disclosure about my record of criminal and city by-law offences and accusation by police since Jan. 30, 2000.
2. Full and completed [sic] disclosure about complains [sic] pertaining to me made by other person[s] and the results since Jan. 30, 2000. (I do not need persons' name as Information and Privacy Act stands)
3. The police response times to my 911 calls.

I look forward to all of the information shortly.

The Police then issued a decision letter dated June 25, 2004. In it they state:

Pursuant to your telephone conversation with A/Co-ordinator, P. Wilson on June 24, 2004 you have agreed to narrow down the scope of your request to 911 calls,

criminal record and complaints made against you in an effort to expedite your request based on a close court date.

You do not have a criminal record with **this Police Service**, therefore access to the requested record cannot be provided because such record does not exist. You are however, currently before the court on a charge of **Careless Use of a Firearm** with the next court date being [...].

The portion of your request concerning the above is still before the courts and in order to prevent interference with the judicial process, access is denied to the information pursuant to subsections 8(1)(a) [interfere with a law enforcement matter] and 38(a) [discretion to refuse access to one's own personal information] of the [Act]. Partial access is granted, however, to the additional record and 911 calls you made between January 30th and May 28th, 2004. Access is denied to certain information pursuant to subsections 14(1)(f), 14(3)(b) & 38(b) [unjustified invasion of another's personal privacy] of [the Act].
[emphases in original]

In response to the decision letter, the requester sent correspondence to the Police dated June 30, 2004, in which he asserted that he did not narrow his request with respect to the 911 calls, but he understood that it would simply take longer to obtain some of the information requested.

His correspondence of June 30, 2004 also refers to an alleged possible by-law offence of his selling fireworks without a permit which, he says, is tied into the criminal charge of careless use of a firearm and to information relating to robberies at his place of business.

The correspondence concludes by stating that "in the worst case" details were required of any situation involving the Police and " I, or others harassing, threatening or doing any other unlawfully [sic] acts against my family and I, and my business with the names shown [as] suspect A, B, C, D or E etc."

The requester (now the appellant) then commenced an appeal of the Police's decision to deny access.

In keeping with the procedures of this office the appeal was sent to mediation. As set out in the Revised Mediator's Report (prepared at the conclusion of mediation) there was a divergence of opinion between the appellant and the Police on the scope of the request. In addition, the appellant was of the opinion that the Police failed to locate additional responsive records. This raises the issue of whether the Police conducted a reasonable search for records.

As set out in the Revised Mediator's Report, one of the foundations for the appellant's belief that additional records exist was a telephone conversation the appellant alleges he had with a senior police officer at 42 Division. According to the appellant, the officer told him that there is a record of a City by-law offence of his selling fireworks to children without a licence. As re-

iterated in the Report, the appellant's letter of appeal alleges that while attending at the appellant's place of business two police officers told him that someone said that he had sold fireworks to children. Partly on this basis, the appellant feels that the Police should have a record of complaints by individuals about the alleged sale of fireworks to children. In addition, he says that there should be records with respect to a "robbery" and "assaults" committed at his place of business. In particular, the appellant wishes to know "the results" of a call in July 2003 with respect to a robbery and assault of his wife at his place of business. In that regard, he also believes there should be records outlining whether anyone was arrested and what, if any, sentence was given.

The Mediator concluded the Report by setting out that she had asked the Police to conduct a further search for records responsive to all parts of the appellant's request, but that as of the date of her Report, the Police had not done so. The Police did, however, inform the Mediator that despite the narrowing of the request they had conducted a search to locate all records responsive to all parts of the original request.

As the appeal did not resolve at mediation it moved to the adjudication stage.

I began the adjudication process by sending a Notice of Inquiry to the Police. I asked the Police to address whether the records they identified were responsive to the request, the reasonableness of their search for responsive records and the application of the exemptions they rely on to deny access. The Police decided not to provide any representations.

I then sent a Notice of Inquiry to the appellant, who provided this office with extensive representations in response. As the appellant's representations raised issues that I determined the Police should be given an opportunity to address, I sent a letter inviting their reply submissions along with the appellant's representations in their entirety. The Police provided extensive representations in reply.

The appellant subsequently advised this Office that the charge against him for careless use of a firearm was withdrawn. This was later confirmed by the Police. The appellant is involved in civil litigation in relation to the charge.

THE RECORDS

The records which the Police have identified as responsive to the request consist of 23 pages. The records include I/CAD Address History Reports, I/CAD Event Details Reports, Record of Arrest, Supplementary Record of Arrest (two pages comprising a Charge List for Arrest and a Complainants/Victims List for Arrest) and Synopsis for a Guilty Plea (also two pages). The information which the Police claim is non-responsive to the request, or exempt under the *Act*, consists of severed portions of pages 1, 2, 3, 4, 5, 6, 7, 14, 17, 18 and all of pages 19 to 23 of the records.

DISCUSSION

SCOPE OF THE REQUEST

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

.

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

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

For the sake of clarity it should be noted that there are two types of offences that are the subject of the appellant's request for information. The first is a criminal offence of careless use of a firearm, the charge that was withdrawn. The second relates to information that the appellant alleges exists in relation to a possible by-law offence of selling fireworks to children without a license.

The Representations of the Appellant

In his representations the appellant recounts what he believes was the scope of his original request and emphasizes that part 4 of the request is not for the response time to his 911 calls, but rather for the general statistical result for the Police response to 911 calls involving crime. He believes that responsive information would include the overall average response time for 911 calls involving crime, and the average response times for 911 calls involving crime for different situations broken down by level of emergency.

With respect to Part 3 of the request the appellant submits that he had earlier advised that he did not need the names of any complainant(s). But, he says, this exception from the scope of his

request would not extend to the names of those who he alleges violated section 140 of the *Criminal Code* (Misleading Justice/Public Mischief), by making allegations against him that led to the laying of the charge of careless use of a firearm since in his view they are “criminal suspects”.

The appellant further states that the time period of his request should be up to the end of the adjudicative process.

The Representations of the Police

The Police submit that the appellant is bound by his position in his correspondence subsequent to his original request where, by using the word “my”, he is only referring to the response times concerning his own 911 calls. According to the Police, by doing this the appellant narrowed his earlier more broadly worded request for *all* response times. The Police further submit that the appellant is also bound by his statement in his correspondence that he is not seeking access to the names of individuals. The Police also assert that information relating to calls made by other individuals from the appellant’s place of business to request Police attendance is outside the scope of the request.

The Police object to any extended time frame for the request. The Police state that the *Act* sets out clear procedures for responding to a request. According to the Police these procedures do not include an open-ended process for ongoing access, which, in any event, is not altered by the appellant’s satisfaction with the Police’s response to his request. They submit that one of the key elements in responding to a request is the time frame for which information is sought. The Police submit that requiring an institution, after the fact, to have an open-ended time frame prevents an institution from addressing all issues during an appeal which would have been fully explored during the processing of the request.

Analysis and Findings

Unfortunately, except for the clarification that Parts 1 and 3 of the original request relate to records pertaining to the appellant, the communications between the Police and the appellant, whether considered to be efforts at clarification, explanations or even modifications of the request, did not move the matter forward. Instead, the scope of the request became a moving target.

I have carefully considered the representations with respect to the 911 calls and they lead me to conclude that the appellant never waived his request for general reaction times. Although there were occasions when the appellant indicated he wished to obtain times that were specific to his own 911 or 416-808-4200 calls, I do not believe that he intended explicitly or implicitly by doing so to limit the general scope of his initial request.

I am also of the opinion that, in the circumstances of this appeal, the best course of action is to treat the request as applying to the time frame that begins on January 30, 2000 and ends on May

28, 2004. This corresponds with the time frame set out in the original request and allows for the inquiry to be focussed on the request as originally framed.

As a result, I have determined that the scope of the appellant's request under consideration in this appeal is as follows:

1. The full and complete criminal and City by-law offence records pertaining to the appellant from January 30, 2000 to May 28, 2004.
2. The full and complete records pertaining to the appellant's calls to 911 or 416-808-4200 from January 30, 2000 to May 28, 2004.
3. The full and complete records pertaining to complaints about the appellant from January 30, 2000 to May 28, 2004.
4. The statistical result of the Police reaction time to 911 calls i.e. How long will it take for the Police to come to the scene after a 911 call?

This encompasses the items referred to by the appellant in his correspondence dated June 23 and June 30, 2004. Any other requested information is outside the scope of this appeal and will not be addressed in this order. If the appellant seeks access to this other information, he should submit a new request for it.

I now turn to the analysis of the portions of the records that the Police identified as non-responsive.

RESPONSIVENESS OF THE RECORDS IDENTIFIED BY THE POLICE

In their decision letter dated June 25, 2004, the Police state that they provided access to the appellant's calls to 911. The Police state that while the appellant has made calls from his place of business himself for police attendance, other individuals have access and opportunity to make calls for police attendance, either using the telephone at the place of business or a cellular telephone. The Police subsequently advised that the severed information on pages 1, 2 and 3 of the I/CAD Address History Reports and a portion of the severed information on page 14 of the I/CAD Event Details Report are calls for service made by individuals other than the appellant, and all of this information is therefore non-responsive.

The Police also state in their representations that the severed information on pages 4, 5, 6, 7, 17, 18 and a portion of the severed information on page 14 of the I/CAD Event Details Reports pertain to activities of police officers for events and duties unrelated to responding to the appellant's calls for service. The Police submit that this information is also not responsive to the request.

Analysis and Findings

From my review of the records it would appear that the Police are of the view that only the calls that the appellant made himself are responsive to the request. I agree. In my opinion, calls to 911 for service from individuals other than the appellant falls outside the scope of the request and information pertaining to those calls does not reasonably relate to the request, and is therefore not responsive to it.

I have reviewed the severed portions of pages 1, 2, 3 of the I/CAD Address History Reports and pages 4, 5, 6, 7, 14, 17 and 18 of the I/CAD Event Detail Reports that the Police claim are not responsive to the request. I find that the withheld information on these pages, except for a portion of the information that appears in the second line on page 14, pertain to calls for service made by individuals other than the appellant or to activities of police officers for events and duties unrelated to responding to calls for service regarding the appellant. I find this severed information does not reasonably relate to the request, and is therefore not responsive to it. I will not consider this information further.

The result of this finding is that only an individual's name that appears in the second line on page 14 of the I/CAD Event Detail Reports and all of pages 19 to 23 (a Record of Arrest (page 19), the Supplementary Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23)) remain to be addressed in this order. Later in this order, I will consider the application of the exemptions claimed by the Police for this information. I turn now to the adequacy of the Police's search for responsive records.

SEARCH FOR RESPONSIVE RECORDS

Where an appellant 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 within its custody or control. [Orders P-85, P-221, PO-1954-I].

Although an appellant 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.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody or control [Order P-624].

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

The appellant alleges that there are other responsive records in relation to the alleged possible by-law offence of him selling fireworks to children without a license, his calls to 911 or 416-808-4200 from January 30, 2000 to May 28, 2004 and any complaints about him during that same time period.

In his representations the appellant repeats his allegation that a named senior officer at 42 Division told him that there is a record of a City by-law offence of his selling fireworks to children without a licence. He advises that this issue has become one of the claims in a lawsuit that he has commenced against the Police.

In further support of his view that additional records exist, the appellant's representations also refer to an alleged robbery that occurred at his place of business, and two other main events that he says may have led to the creation of additional records of complaints about him within the applicable time frame. These "events" are the circumstances leading up to the criminal charge of careless use of a firearm, and a purported attendance by two individuals, whom he describes as two plain clothes officers from 42 Division, at his place of business regarding the possible alleged by-law offence of selling fireworks to children without a licence.

The appellant alleges that the two individuals attended his place of business on May 21, 2004 at which time they conducted a search. The appellant alleges that the excuse given for this search was that someone had reported that he sold fireworks to minors. At the end of his submissions, after inquiring how he could know without production of the requested information if the Police fabricated crimes against him, he says, "I need to know about any information that says I did wrong".

In their representations, the Police indicate that while they have a mechanism and specific forms which record convictions for criminal offences committed within the City of Toronto, this is not the case for by-law convictions. The Police advise that records of conviction for by-law offences can be obtained from the City of Toronto Court Services or through the Ministry of the Attorney General.

The Police assert in their representations that the Municipal Standards and Licensing Commission of the City of Toronto (the Commission) is the institution that regulates licensing of the sale of fireworks, not the Police. The Police state that by-law officers with the Commission are responsible for investigating complaints and laying by-law charges relating to the sale of fireworks.

In their representations, the Police state that both the analyst in the Police's Freedom of Information Unit and the Divisional Complaint's Investigator conducted separate searches to determine whether the individuals whom the appellant alleges attended at his place of business on May 21, 2004, were, in fact, police officers. The Police say that both searches failed to locate any evidence that their officers attended that day.

It is therefore the position of the Police that a reasonable search was conducted on two separate occasions for records which would identify whether their officers attended as alleged on May 21, 2004.

The Police further submit that the appellant's statement in his representations that "I need to know about any information that says I did wrong", is outside the scope of the appellant's request. The Police state that records which may exist that indicate that the appellant "did wrong", may not have resulted from a "complaint against him by an individual". They give the example of a police officer witnessing the appellant commit a "wrongdoing", such as speeding, in which case there would be no individual making a complaint.

Analysis and Findings

As set out above, the *Act* does not require the Police to prove with absolute certainty that further records do not exist. However, they must provide sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records within their custody or control.

I have found the scope of the request to be the following:

1. The full and complete criminal and City by-law offence records pertaining to the appellant from January 30, 2000 to May 28, 2004.
2. The full and complete records pertaining to the appellant's calls to 911 or 416-808-4200 from January 30, 2000 to May 28, 2004.
3. The full and complete records pertaining to complaints about the appellant from January 30, 2000 to May 28, 2004.
4. The statistical result of the Police reaction time to 911 calls i.e. How long will it take for the Police to come to the scene after a 911 call?

I must now determine whether the Police conducted a reasonable search for records that fall with those four parts.

With respect to parts 1 and 3 of the request, while I am satisfied that the Police conducted a reasonable search for criminal offence and by-law offence conviction records pertaining to the appellant (including records relating to the charge of careless use of a firearm), there is no denial that the named senior officer at 42 Division made the statement attributed to him about a by-law offence nor any explanation for him having made it.

I am satisfied that the Police have no mechanism to record by-law offence convictions. Furthermore, the Police have adequately detailed the efforts made to search for documentation relating to the incident that allegedly occurred on May 21, 2004, and I am satisfied that they made a reasonable effort to identify and locate responsive records within their custody or control

that relate to that incident. However, I remain uncertain as to whether the Police actually conducted a search for records of any complaints (other than by-law offence conviction records) made against the appellant, of any nature, for breach of a by-law or otherwise, which could include, in my opinion, Police initiated complaints. As a result, I will require the Police to conduct a search for records within their custody and control pertaining to complaints about the appellant from January 30, 2000 to May 28, 2004.

As regards part 2 of the request, based on my review of the records and the representations, I am also not satisfied that the Police conducted a reasonable search for records of the appellant's calls to 416-808-4200 from January 30, 2000 to May 28, 2004. From my review of the records it would appear that the Police are of the view that only the calls that the appellant made himself are responsive to the request. In that respect they are correct, however, while the Police responded to the request for records pertaining to the appellant's 911 calls, it is not clear whether a search for responsive records was conducted in relation to the calls the appellant may have made to 416-808-4200. I will therefore order the Police to conduct another search for records of calls the appellant himself made to 416-808-4200 from January 30, 2000 to May 28, 2004.

Regarding part 4 of the request (general 911 response times), the Police took the position (outlined above) that the appellant had narrowed this portion of the request. As a result, they did not respond to this part of the request or conduct a search for responsive records. They must do so now.

In summary, the Police are to conduct a further search for records of any complaints made against the appellant (except in relation to the charge of careless use of a firearm, by-law offence conviction records and a purported alleged attendance of officers from 42 Division at the appellant's place of business on May 21, 2004), calls made by the appellant himself to 416-808-4200 and the statistical result of the Police reaction time to 911 calls i.e. how long will it take for the Police to come to the scene after a 911 call, all for the period from January 30, 2000 to May 28, 2004.

I now turn to the records or the portions of the records that the Police did identify as non-responsive or exempt under the *Act*.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply to the information in the records remaining at issue, it is necessary to decide whether the record contains "personal information", and if so, to whom it relates.

Section 2(1) of the *Act* defines "personal information", in part, as follows:

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- ...
- (g) the views or opinions of another individual about the individual, and
- (h) 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.

The first step in the analysis is to determine whether the documents contain “person information” and whose “personal information” it is.

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11]. To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225], but even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

The appellant submits that he would have been part of any relevant proceedings so any “personal information” of other individuals contained in the records would be that of a criminal suspect or the appellant's family members. The appellant submits that his wife, father-in-law and son have requested disclosure and that he can speak for his daughter, so there is “no excuse” for the Police to withhold the requested information.

Page 14 of the I/CAD Event Details Report contains information that the Police say relates to a call for service from the appellant. I find that the responsive portions of page 14 relate to the appellant and are his personal information. The second line on page 14 contains the name of an individual other than the appellant. I find that this is the personal information of that other individual.

The Record of Arrest (page 19), Supplementary Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23) relate to the charge of careless use of a firearm. I find that the entirety of these records relates to the appellant and is the appellant's personal information.

Page 19 also contains the personal information of an individual other than the appellant. This is found in the portion of page 19 that relates to the complainant or victim and in the portion of page 19 under the heading "spouse" and "telephone no.(s) called". I find this to be the personal information of those individuals. On Page 21 (being the second page of the Supplementary Record of Arrest) the name, address, telephone number, sex and age of an individual other than the appellant is found. I find this to be the personal information of this individual. I also find that the personal information of individuals other than the appellant, including a witness, whom I believe is otherwise identified on the Record of Arrest and the Supplementary Record of Arrest, is found at page 22 (being the first page of the Synopsis for a Guilty Plea).

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38(a) provides a number of exemptions from this right. It reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, **8**, 8.1, 8.2, 9, 10, 11, 12, 13, or 15 would apply to the disclosure of that personal information. [emphasis added]

LAW ENFORCEMENT

The Police take the position that the information in the Record of Arrest (page 19), Supplementary Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23), is exempt from disclosure under section 38(a) because the information fits within section 8(1)(a).

Section 8(1)(a) reads as follows:

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

- (a) interfere with a law enforcement matter

General principles

Law Enforcement

The term “law enforcement” is used in several parts of section 8, and 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.)]. The law enforcement matter in question must be a specific, ongoing matter. The exemption does not apply where the matter is completed, or where the alleged interference is with “potential” law enforcement matters [Orders PO-2085, MO-1578].

Analysis and Findings

The criminal charge of careless use of a firearm was withdrawn and is at an end. There was no indication there is any ongoing law enforcement matter involving the appellant in relation to these records. As a result, I am not satisfied that releasing the information in the Record of Arrest (page 19), Supplementary Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23) (or for that matter the information that appears in the second line on page 14 of the I/CAD Event Detail Reports) will interfere with an ongoing law enforcement matter. I find therefore, that the information does not fit within section 8(1)(a), and the exemption in section 38(a) of the *Act* does not apply.

PERSONAL PRIVACY

Section 38(b) of the *Act* reads as follows:

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.

In order for disclosure to "constitute an unjustified invasion of another individual's personal privacy" under section 38(b), the information in question must be the personal information of an individual or individuals other than the person requesting it. As set out above, I have found that pages 14, 19, 21 and 23 contain both the personal information of the appellant and of individuals other than the appellant. I therefore find that the undisclosed portions of the records at issue that consist only of the appellant's personal information (and not that of any other individual) is not exempt under section 38(b).

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the Police may exercise their discretion to disclose the information to the appellant. This involves a weighing of the appellant's right of access to his own personal information against the other individual's right to protection of their privacy.

To determine whether the disclosure of another individual's personal information would or would not be an unjustified invasion of the personal privacy of the individual to whom the information relates under 38(b), the factors and presumptions in sections 14(2), (3) and (4) are of assistance.

Section 14(2) provides some criteria for the institution to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated 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 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (*John Doe*)] though it can be overcome if the personal information at issue falls under section 14(4) of the *Act*, or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the exemption. [See Order PO-1764]

The personal information of an individual other than the appellant under the heading "spouse" and "telephone no.(s) called" in the Record of Arrest (page 19) is dealt with in the "absurd result" discussion below.

Section 14(3)(b)

Section 14(3)(b) reads as follows:

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.

Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law [Orders M-734, M-1086].

Analysis and Findings

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

Page 14 is part of an event detail report relating to the allegedly criminal actions of an unnamed individual at the appellant's place of business. As a result of this individual's conduct the Police were called and facts were recorded in the event detail report. I accept the position of the Police that the individual's name that was severed from the second line on page 14 of the I/CAD Event Detail Report was compiled and is identifiable as part of an investigation into a possible violation of law.

The presumed unjustified invasion of personal privacy at section 14(3)(b) therefore applies to this information. Section 14(4) does not apply to this information. Disclosure of this information is therefore an unjustified invasion of personal privacy, and it is therefore exempt under section 38(b). I also find that section 16, which has not been raised in this appeal, does not apply to this information.

I now turn to the balance of the records under consideration.

Section 14(2)

The appellant has identified that his interest in the information severed from pages 19 to 23 stems from his concern that the allegations that led to his being charged with careless use of a firearm were unfounded and individuals who made allegations leading to the charge engaged in criminal conduct, contrary to section 140 of the Criminal Code (misleading justice/public mischief). This would include those who made a statement to the Police. The appellant also takes issue with the conduct of the Police generally and is involved in civil litigation in relation to the charge. The Police have referred specifically to 14(2)(d) as a factor they considered in denying access to the requested information. As a result, this raises the application of section 14(2) of the *Act*.

Section 14(2) reads in part:

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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- ...
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;

Analysis and Findings

The information in the Record of Arrest (other than under the heading “spouse” and “telephone no.(s) called”, dealt with below) (page 19), Supplementary Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23) clearly relate to the charge of careless use of a firearm. Page 19 (being the Record of Arrest) contains the personal information of an individual described as a complainant or victim. On page 21 (being the second page of the Supplementary Record of Arrest) the name, address, telephone number, sex and age of the complainant/victim (who is a child) is found. There is also information relating to two children at page 22 (being the first page of the Synopsis for a Guilty Plea).

I find that the factor set out in section 14(2)(f) is an extremely relevant consideration that favours the non-disclosure of the personal information of individuals other than the appellant (or his spouse, dealt with below) that is found in these records. In my view, based on the nature of the records from which the information was severed, and the fact that the individuals are children, the information contained in those records is "highly sensitive" for the purpose of section 14(2)(f) because its disclosure could reasonably be expected to cause excessive personal distress to the individuals. (See Orders M-1053 and PO-2339).

In my view, the appellant's concerns regarding the conduct of the Police and his involvement in civil litigation in relation to the charge, which raise the application of sections 14(2)(a) and (d) do not outweigh the individuals' right to the protection of their privacy. Based on the material before me, I am not satisfied that the factor in section 14(2)(a) applies to the undisclosed information, given its nature. To the extent that section 14(2)(d) is engaged, considering the type of information that is withheld, in the circumstances of this appeal and based on the materials before me, it is not a particularly strong consideration.

I find that, on balance, the factors favouring privacy protection at section 14(2)(f) outweigh any factors or circumstances favouring disclosure in this case, and that the disclosure of the individuals' personal information in the records at issue constitutes an unjustified invasion of their personal privacy. I therefore find that the exemption under section 38(b) applies to the records at issue.

In light of this finding, it is not necessary for me to consider the application of the additional factors favouring privacy protection at section 14(2), nor the presumption in section 14(3)(b) of the *Act* to these parts of the records.

Conclusion

I therefore find the personal information of individuals other than the appellant on the second line on page 14 and in the Record of Arrest, Supplementary Record of Arrest and Synopsis for a Guilty Plea, to be exempt under section 38(b) because its disclosure would be an unjustified invasion of another individual's personal privacy.

ABSURD RESULT

I now turn to the information in the Record of Arrest (page 19) under the heading "spouse" and "telephone no.(s) called".

Whether or not the factors or circumstances in section 14(2) or the presumptions in section 14(3) apply, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]
- the requester was present when the information was provided to the institution [Order P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

The information contained in the Record of Arrest (page 19) that pertains to the appellant's spouse was no doubt supplied to the Police by the appellant himself. I cannot agree that in the circumstances of this appeal, the disclosure of this information to the appellant would result in an unjustified invasion of the spouse's personal privacy under section 38(b), whether or not any of the factors or circumstances in section 14(2) or the presumptions in section 14(3) apply. Rather,

to decline to grant access to this information, under the circumstances, would lead to an absurd result [Orders MO-1196, PO-1679, MO-1755]. As a result, I will order that this information be disclosed.

THE EXERCISE OF DISCRETION

Where appropriate, institutions have the discretion under the *Act* to disclose information even if it qualifies for exemption under the *Act*. Because section 38(b) is a discretionary exemption, I must also review the Police's exercise of discretion in deciding to deny access to the severed portions of the second line on page 14 of the I/CAD Event Detail Report which contain personal information that pertains to individuals other than the appellant and his spouse, and to the Record of Arrest (page 19), Supplementary Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23).

On appeal, this office may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so (Orders PO-2129-F and MO-1629).

I may find that the Police erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In these cases, I may send the matter back to the Police for an exercise of discretion based on proper considerations [Order MO-1573].

The Police list a variety of factors relating to their exercise of discretion not to release the information to the appellant including:

- a) The expectation by a third party of confidentiality;
- b) The implied trust held by members of the public that the Police will act responsibly in the manner in which it deals with recorded personal information, and that trust is extended to an expectation that such information would not be routinely available for any purpose other than its original collection.
- c) The information-gathering process would be critically compromised if members of the public felt compelled to give information in a guarded manner (i.e. by withholding essential facts such as the complete details of an incident, or their full name and address) for fear of an institution favouring release over the protection of their privacy;

- d) The reluctance on the part of a participant in a law enforcement investigation to provide complete details would certainly hinder a thorough and proper investigation, potentially compromising the investigation;
- e) The protection of privacy for individuals with respect to their personal information.
- f) That the release of personal information such as a name, address and telephone number, could allow an individual the opportunity to contact the affected party and attempt to influence their testimony, or even go so far as to attempt to intimidate the complainant/witness in an effort to have the charges withdrawn or a finding of not guilty resulting from a complainant's witness's fear of testifying against the accused individual.
- g) The fact that the appellant was, at the time, before the Courts on a charge of careless use of a firearm and is involved in civil litigation which would relate to a fair determination of his rights under section 14(2)(d) of the *Act*.
- h) The appellant's position that he is entitled to this information.

I have reviewed the representations of the Police. Although they considered the fact that there was a charge before the courts in deciding to withhold information, which has now been withdrawn, I nevertheless conclude that their exercise of discretion to withhold the information I have not ordered disclosed was appropriate, given the circumstances and nature of the information. I will therefore not order a further exercise of discretion. This, however, does not relieve the Police from conducting the further searches that I have ordered.

ORDER:

1. I order the Police to disclose a portion of the Record of Arrest (page 19), Supplementary Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23) by sending them to the appellant by **November 4, 2005** but not before **October 31, 2005**. For greater certainty, I have highlighted the exempt information in the Record of Arrest (page 19), Supplementary Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23) on the copy provided to the Police with this order. The highlighted information is **not** to be disclosed.
2. I uphold the decision of the Police to deny access to the withheld portion of pages 1, 2, 3, 4, 5, 6, 7, 14, 17 and 18 and the portions of the Record of Arrest (page 19), Supplementary Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23) that are highlighted on the copies provided to the Police with this order.
3. In order to verify compliance with provision 1 of this order, I reserve the right to require the Police to provide me with a copy of the Record of Arrest (page 19), Supplementary

Record of Arrest (pages 20 and 21) and Synopsis for a Guilty Plea (pages 22 and 23) as disclosed to the appellant.

4. I order the Police to undertake a further search for records of any complaints made against the appellant (except in relation to the charge of careless use of a firearm, by-law offence conviction records and a purported alleged attendance of officers from 42 Division at the appellant's place of business on May 21, 2004), calls made by the appellant himself to 416-808-4200 and the statistical result of the Police reaction time to 911 calls i.e. how long will it take for the Police to come to the scene after a 911 call, all for the period from January 30, 2000 to May 28, 2004, using the date of this order as the date of the request.

Original signed by: _____
Steven Faughnan
Adjudicator

September 30, 2005 _____