



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

ORDER MO-1929

Appeal MA-030052-2

Toronto Police Services Board



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NATURE OF THE APPEAL:

Under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) the requester's representative submitted a request to the Toronto Police Service (the Police). The requester is part-owner of an adult entertainment establishment. The request was for access to records relating to a number of incidents, inspections, meetings, investigations, tape-recorded discussions, searches and other activities including one alleged assault, which involved one or both of the requester's named establishments, including the following:

1. From May to August, 1995, in relation to complaints received, investigations conducted, discussed or contemplated, reports prepared or received in relation to the requester or their respective business establishments, all records including data stored electronically created or kept by eight named officers;
2. From December 1 to 31, 1995, in relation to complaints received, investigations conducted, discussed or contemplated, reports prepared or received in relation to the requester, their employees, patrons and the requester's respective business establishments, all records including data stored electronically created or kept by eight named officers;
3. From January 1 to February 28, 1996, in relation to the requester, their employees, patrons and the requester's respective business establishments, all records including data stored electronically as created or kept by eight named officers;
4. From January 26 to 27, 1996, in relation to the requester, their employees, patrons and the requester's one named business establishment, all records including data stored electronically created or kept by thirty-one named officers;
5. From December 1 to 31, 1996, in relation to the requester, their employees, patrons and the requester's one named business establishment, all records including data stored electronically as created or kept by two named officers, and all other officers who were involved in this particular investigation;
6. From May 1 to 31, 1998, in relation to the requester, their employees, patrons and the requester's one named business establishment, all records including data stored electronically kept by two named officers;
7. From August 21, 1998 and onwards, in relation to the involvement of police any way with respect to a named occurrence involving an assault on one of the requesters, all records including data stored electronically as created or kept by two named officers, and all other officers involved in this investigation;

8. From August 21 to September 30, 1998, in relation to the requester, their employees, patrons and the requester's one named business establishment, all records including data stored electronically as created or kept by one named officers, and all other officers involved in the inspections;
9. On May 3, 1999, in relation to the requester, their employees, patrons and the requester's one named business establishment, all records including data stored electronically as created or kept by two named officers, including specific information upon which a delivered notice was based;
10. On May 12, 1999, in relation to the requester, their employees, patrons and the requester's respective business establishments, all records including data stored electronically kept by two named officers;
11. From May 3 to July 31, 1999, in relation to the requester, their employees, patrons and the requester's respective business establishments, all records including data stored electronically as created or kept by two named officers, and all members of the Police who were involved in this occurrence;
12. The project proposals, correspondence, documentation, typewritten notes and all other material which led to the creation of "Project Almonzo", and correspondence, documentation and subsequent proposals relative to "Project Almonzo" from the inception of this project to its termination;
13. From July 1 to August 28, 1999, in relation to the requester, their employees, patrons and the requester's respective business establishments, all records including data stored electronically as created or kept by one named officer;
14. From July 1 to August 15, 2000, in relation to the requester, their employees, patrons and the requester's respective business establishments, all records including data stored electronically as created, kept by or made in relation to two named officers and all other members of the Police who were involved in the occurrence;
15. From September 5 to 9, 2000 in relation to the requester, employees, patrons and the requester's respective business establishments, all records including data stored electronically as created, kept by or made in relation to one named officer and all members of the Police who were involved in the investigation;
16. On November 24, 2000, in relation to the requester, their employees, patrons and the requester's one named business establishment, all records including data stored electronically as created or kept by one named officer and all other members of the Police who were involved in this occurrence;

17. From December 1, 2000 to March 31, 2001, in relation to the requester, their employees, patrons and the requester's respective business establishments all records including data stored electronically as created, kept by or made in relation to one named officer and any other members of the Police who were involved in this occurrence.

The Police initially responded by issuing a time extension of an additional 270 days. The requester, now the appellant, appealed the time extension and appeal MA-030052-1 was opened. Before the inquiry in the appeal was completed, the Police issued an interim decision and fee estimate. Order MO-1644 was issued in which the Police's time extension was upheld and Appeal MA-030052-1 was closed.

The appellant paid the \$10,140.00 deposit (50% of the \$20,280.00 fee estimate) and the Police issued a final decision. The final decision denied access to the records in full, citing sections 8(1)(a), (b), (l), 9(1)(d), and section 14(1) in conjunction with 14(3)(b) and (f), and noted there were non-responsive records. At the same time, the Police requested the final fee payment of \$10,140.

The appellant appealed the fee and the exemptions, and the current appeal was opened.

During mediation, the appellant's representative agreed that the non-responsive records could be removed from the appeal. No other mediation was possible and the file was moved to adjudication.

This office initially sent a Notice of Inquiry to the Police. The Police provided representations in response.

This office then sought supplementary representations from the Police on its exercise of discretion under section 8. The Police provided further representations.

I then sent a Notice of Inquiry to the appellant along with a copy of the non-confidential portions of the Police's representations. The appellant also provided representations.

RECORDS:

There are 8,542 pages of record at issue which include Crown briefs, police reports, police officers' notes, memo book notes, court information forms, witness information and statements, financial and immigration information, faxes, photographs, correspondence, maps, and various other records relating to the appellant's request.

DISCUSSION:

SHOULD THE FEE BE UPHELD?

General principles

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699].

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614].

This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

Section 45(1) requires an institution to charge fees for requests under the *Act*. That section reads:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

More specific provisions regarding fees are found in sections 6, 7 and 9 of Regulation 823. Those sections read:

6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
2. For floppy disks, \$10 for each disk.

3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
 5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.
7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.
- (2) A head shall refund any amount paid under subsection (1) that is subsequently waived.
9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

Representations of the Parties

The Police made the following representations in support of the fee:

It should be noted that the requesters paid the fee deposit of \$10,140; however, due to an administrative error, the supplementary fee letter was NOT provided to the requesters until AFTER the decision letter was sent, and was SUBSEQUENTLY NOT PAID by them.

As stated earlier, this matter was a general information request, thereby allowing search fees. In Order MO-1644 (May 5, 2003), Adjudicator Leslie McIntyre upheld the decision of this institution regarding a 9-month extension placed on the response time for this request, due to the huge volume of records and required search time (and interference with operation so the institution). In order to explain the fees for search time involved, please see below a description of the magnitude of records requested, as excerpted from this institution's representations justifying the time extension (which, as mentioned above, was upheld by the IPC):

EXCERPTS FROM FIRST SET OF REPRESENTATIONS
REGARDING EXTENSION (April 1, 2003):

...The appellant has requested a tremendous volume of records for 2 nightclubs, covering a 6-year period (May, 1995 – March 2001, inclusive). The request consists of 16 segments, each segment covering 1 to 3 months (with few specific days given), involving anywhere from 4 to 30 officers, and requesting documentation in forms of memo books, correspondence, briefs, case files, policies, electronic media, arrest reports, and anything else generated in any investigations. The aforementioned information is not only requested as it relates to the owners (whom the appellant is representing), but also to patrons of the establishments.

PART A of these representations addresses the search for responsive records. PART B addresses the time required to analyze the records and prepare for response.

PART A – SEARCH FOR RESPONSIVE RECORDS

The following is a breakdown of numbers of documents and approximate research time required:

1) Approximately 25,000 boxed documents

All documents must be scrutinized, because as well as looking for anything relating to the 2 establishments, the appellant also asks for the following regarding a large undertaking by several police services – covering several months – known as Project Almonzo:

- a) Project proposals, correspondence, documentation, typewritten notes and all other material which led to the creation of Project Almonzo
- b) Correspondence, documentation and subsequent proposals relative to Project Almonzo through the inception of this project, the continuation of the project and through to the termination of the project

The above documents are in envelopes, files, binders, etc., and must be extracted, examined and organized. Given an approximate estimate of 60 seconds per page to view for responsive records, the total amount of time estimated is 416 hours.

2) Electronic Media – approximately 14,000 records of approximately 41 officers over 6 years

At this point, we have been advised by our Information and Technology Unit that they can download the information required in this portion of the request in small segments only – over a period of time – as there is not sufficient server space to download more.

Approximately 2 gigabytes of file space would be required to move over all of the officers' electronic files at one time, and the server has insufficient space. Estimating that there would be at least 41 officers whose electronic files would be responsive, with a range of 8 to 2609 files to be searched per officer, personnel in the Information and Technology Unit estimate that only 2 officers' files could be downloaded at a time.

In addition, the downloading could only be done overnight so as not to interfere with other systems operations, as a synchronization of servers is required. Therefore, only 2 officers' electronic records could be downloaded per 24 –hour period. Given the approximate number of officers identifiable at this time (approximately 41), this alone would take a minimum of 20 working days (4 weeks).

3) Memo Books and other documentation which must be obtained from various divisions of the Toronto Police Service.

The requester has identified a number of officers who have had contact with his clients/establishments over an almost six year period.

These officers have been listed in each segment of the request, and often the same officer appears in more than one segment. The segments have been divided into time periods anywhere from two days to three months, with few specific dates of contact provided.

As a result, this institution will be scrutinizing and attempting to read hundreds of handwritten memo books (consisting of 100 pages each) looking for responsive records. It is important to note that on average an officer requires a new memo book every 30 days.

As a result, and using Segment 1 as a representative sample, eight officers over a four month period would result in 32 memo books

to be viewed – equal to 3200 pages. Reviewing each page for responsive entries (allowing a conservative one minute per page) would equate to approximately 53 hours.

Using this same equation for all memo books requested, the total time is estimated at 260 hours. That number does not include that portion of the request involving unnamed officers.

Please note that the aforementioned quotes do not include the time needed to send for the records, nor the time required by our liaisons at the divisions to locate hundreds of books and other documentation covering several months.

...

MO-1644 supported the time estimates provided by this institution, and, as mentioned previously, an administrative error resulted in the requesters receiving the decision letter prior to receiving the final invoice. **This invoice was not paid, either by the appellant nor his clients.** The requesters did, however, pay the fee deposit, which covered approximately only one half of the search and analysis time (approximately 676 hours). Given the above-noted scope, volume, and complexity of the search entailed – as thoroughly described in the excerpts – the requesters ended up actually paying a very low price for the hundreds of hours consumed in the search and analysis of over 25,000 records...

In response to the Police's representations, the appellant stated the following:

First, the fee of \$20,000 was premised on an estimated review time of 676 man hours, a great deal of which is said to involve the information relating to a particular court case. The disclosure presented in that court case amounts to a total of approximately 3 file boxes. Assuming that full disclosure was made to the accused and his counsel in that matter, we query the expense of \$20,000 and 676 man hours to review the contents of 3 file boxes. Second, the court case was concluded when the Crown withdrew the charges due to the belief that there was no reasonable prospect of conviction. This position rooted in the fact that voluminous original documentation had been destroyed by the TPS...Finally, the portion of the May 20, 2004, submission referenced above makes it clear that a great deal of the requested information was readily identified and ought to be easily reproduced and presented to the Requester at a fraction of the cost stipulated by the TPS.

Fee Estimate and Final Fee

In the Police's interim access decision to the appellant, the Police provided the following to the appellant regarding the fee.

PART A – FEE DEPOSIT

Further to your access request under the *Municipal Freedom of Information and Protection of Privacy Act*, section 45 of the *Act* allows fees to be charged.

Based on the documentation that we know exists at this time, the estimated search fee for the records requested is \$20,280.00. Your written acceptance of this fee, together with a deposit of \$10,140.00 is required prior to proceeding with the request.

Finally, I note in the Police’s supplemental fee decision which was sent to the appellant on December 12, 2003, the Police provided the following:

Search Time

Total search time hours to locate

Search time in hours – Chargeable	676 hours	
Search time charge per hour		\$30.50

Total charge for search and assembly of document	<u>\$20,280.00</u>
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The Police only charged for the search of the responsive records. As the appellant had already paid the deposit of \$10,140.00, the amount owing was \$10,140.00. The appellant has not yet paid the remaining amount.

Analysis and finding

In this case, the Police have only provided the excerpted representations from their earlier representations which dealt with the time extension appeal in support of their current fee. This is both unhelpful and unacceptable in order to substantiate the fee of \$20,280.00.

I note from the Police’s interim decision dated May 2, 2003 that the Police only provided a fee estimate and requested the deposit. While the Police did not provide a description of the searches to be undertaken or the work to be done to respond to the request it did include an interim access decision which indicated to the appellant the following:

It should be noted at this time that matters relevant to your request are still before the courts. As a result – based on a review of a representative sample – we anticipate that upon completion of the search and a review of the records, you would get limited, if any, access to the information requested.

Access may be denied to certain, or all, information requested pursuant to subsections 8(1)(a), 8(1)(f), 14(1)(f), and 14(3)(b) of the *Municipal Freedom of Information and Protection of Privacy Act*.

Despite being informed that access if any would be severely limited, the appellant still chose to pay the deposit. The Police then proceeded to complete the work necessary to respond to the request.

The Police provided the appellant with a final access decision on December 12, 2003 which denies access to all information. The Police also provided the supplemental fee letter described above.

A final access decision by an institution is done when all the work has been completed necessary to respond to the request. I would assume that when the Police provided the final decision letter and supplemental fee decision to the appellant it had completed the search necessary to find the records. Thus, the supplemental fee decision including the 676 hours of search time would have been based on the actual time it took to complete the search for records responsive to the appellant's request.

I find it highly coincidental that the amount quoted in the fee estimate is the exact as the amount quoted in the supplemental fee decision (676 hours). While it is likely that in some cases the fee estimate amount and the actual fee may be the same, I find it hard to accept that this is the case in the current appeal.

The excerpted representations provided by the Police provide a description of the searches to be undertaken to locate the records; however, I have no evidence as to the actual searches undertaken to complete the request. Thus, for example, in the excerpted representations, the Police refer to searching through 25,000 boxed documents which would take 416 hours. Did this search actually occur? The Police do not provide any explanation as to the searches undertaken or the work done to complete the request.

As stated above, an institution, must in all cases, provide a detailed breakdown of the fee and a detailed statement as to how the fee was calculated (Orders P-81 and MO-1614). The Police's explanation of its fee in the supplemental fee letter does not provide the level of detailed required for a fee decision letter. The Police have provided virtually no substantiation for their fee. Based on my review of the Police's representations, I find that I am unable to uphold the Police's fee of \$20,280.00. The appellant should be reimbursed the \$10,140.00 he paid as a deposit.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (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,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (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 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, the information must be about the individual in a personal capacity. 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]. 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 Police submit that the records contain the personal information of hundreds of persons. I agree.

It should be noted that none of the personal information in the records relate to the appellants.

The records relate to a number of identifiable individuals who were formerly employed by the appellant's establishment or were otherwise connected to the appellant's establishment. All of the information reveals something of a personal nature about these individuals including:

- national and ethnic origin, age, sex, marital and family status (paragraph (a) of the definition of “personal information” in section 2(1));
- educational, medical, criminal, employment information (paragraph (b) of the definition of “personal information” in section 2(1));
- phone numbers, passport numbers, social insurance numbers, health numbers (paragraph (c) of the definition of “personal information” in section 2(1));
- addresses, telephone numbers (paragraph (d) of the definition of “personal information”);
- the personal opinions and views of individuals (paragraph (e) of the definition of “personal information” in section 2(1));
- confidential correspondence sent by the individual to various institutions (paragraph (f) of the definition of “personal information” in section 2(1)),
- individuals’ names appearing with other personal information relating to the individual or whose disclosure would reveal other personal information about the individual (paragraph (h) of the definition of “personal information” in section 2(1)).

INVASION OF PRIVACY

General principles

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. In the circumstances, it appears that the only exception that could apply is paragraph (f).

The factors and presumptions in sections 14(2) and (3) help in determining whether disclosure would or would not be “an unjustified invasion of privacy” under section 14(1)(f). If any of paragraphs (a)-(h) of section 14(3) apply, the disclosure of the information is presumed to constitute an unjustified invasion under section 14(1) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The list of factors under section 14(2) is not exhaustive. The institution must also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 14(2) [Order P-99].

Representation of the parties

The Police submit that in this appeal, the presumption at section 14(3)(b) applies to many of the records. They state:

The personal information collected from the parties in this extensive investigation was compiled by police officers in order to determine whether Criminal Code offences had been committed. There were charges laid for many offences, including Keep Common Bawdy House, Permit Premises to be sued as a Bawdy House, Living on Avails of Prostitution, Exercise Control, Forgery, etc. The information collected and maintained in these records was used to investigate the offences and led to several prosecutions.

The appellant submits that the records at issue do not contain personal information and states:

Also at page 6 of the May 20, 2004, submission, under the heading "Issue C", it is stated that "personal information" contained in the records and "hundreds of pages of detailed financial documents" are contained within the requested information. All of this information, assuming it was obtained in the course of the TPS investigation of the Requester, its former and present employees, is information which emanates from either records which the Requester is otherwise privy to as a function of [its] normal business operations. That being the case, the privacy concerns set out at page 6 of the May 20, 2004, submission are illusory and unfounded. In addition, the only financial documents to which the submission can be referring are those seized from the business premises of the Requester and those are part of the documents which were supposedly destroyed by the TPS and which led to the termination of the proceedings against their former employee.

Analysis and findings

Section 14(3)

The Police submit that section 14(3)(b) of the *Act* is particularly relevant to this appeal. I agree and find that sections 14(3)(d), (e), (f) and (h) are also relevant. These sections state:

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;

- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242]. 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-841, M-1086].

From my review of the records, which all relate to various investigations undertaken by the Police and various police services, I find that disclosure of the personal information with respect to the various individuals which was compiled and is identifiable as part of an investigation into a possible violation of law, is presumed to constitute an unjustified invasion of personal privacy under section 14(3)(b).

The records further contain the financial records of an individual relating to income, assets, bank balances, and financial history and activities. In addition there are copies of tax return information included in the records. This financial and tax information is not about the appellant or the appellant's corporation. I find that disclosure of this information is presumed to constitute an unjustified invasion of this individual's personal privacy under sections 14(3)(e) and (f).

The records also contain information pertaining to the employment history of various individuals. I find that disclosure of this information is presumed to constitute an unjustified invasion of these individuals' personal privacy under section 14(3)(d).

Finally, the records contain information that indicates individual's racial and ethnic origin as well as sexual orientation, including passport and immigration information as well as correspondence, and police officers' notes and other documents. I find that disclosure of this information is presumed to constitute an unjustified invasion of personal privacy under section 14(3)(h).

As I have found that disclosure of the personal information in the records would be presumed to be an unjustified invasion of the personal privacy of a number of individuals under section 14(3)(b), (d), (e), (f) and (h) and section 14(4) and section 16 do not apply, these records are exempt under section 14(1). Thus, the following records are exempt from disclosure:

- immigration documents
- police notes, memo books, reports

- financial records (statements, bank books, cheques, invoices, income tax returns)
- correspondence
- payroll and time sheet records
- contracts
- interview notes
- photographs
- faxes

Section 14(2)

The Police also applied the presumption at section 14(3)(b) to the personal information included in the Crown briefs and a number of documents that were clearly prepared upon the completion of the investigations into a number of individuals. As stated above section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law. As such I will review whether any of the factors in section 14(2) apply such that disclosure of the personal information would constitute an unjustified invasion of personal privacy.

Neither the Police nor the appellant addressed the factors in their representations. From my review of the factors in section 14(2), the only factors that would apply are those factors weighing against disclosure which state:

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,

- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (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.

Considering the nature of the police investigations and the fact that a number of the individuals whose personal information at issue were either charged with offences under the *Criminal Code* or provided information to aid the Police, I find that the above listed factors all apply to the personal information found in the Crown briefs and other records.

As the only factors that I have found are relevant to the personal information in the Crown briefs weigh against disclosure, I find that disclosure of the personal information in the Crown briefs and other records would constitute an unjustified invasion of personal privacy and as such this information is exempt under section 14(1).

Thus, the following records are exempt from disclosure:

- summonses
- bail documents
- appearance forms
- subpoena information
- photographs
- charge and victim lists
- emails
- interview notes
- meeting notes
- faxes
- correspondence

LAW ENFORCEMENT

General principles

The Police claim that sections 8(1)(a), (b), (l) apply to exempt the remaining pages of records at issue. These sections state:

- (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
 - (a) interfere with a law enforcement matter;
 - (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (l) facilitate the commission of an unlawful act or hamper the control of crime.

The term “law enforcement” is used in several parts of section 8, and is defined in section 2(1) 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)

The term “law enforcement” has been found to apply in the following circumstances:

- a municipality’s investigation into a possible violation of a municipal by-law [Orders M-16, MO-1245]
- a police investigation into a possible violation of the *Criminal Code* [Orders M-202, PO-2085]
- a children’s aid society investigation under the *Child and Family Services Act* [Order MO-1416]

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.)].

Where sections 8(1)(a), (b) and (l) use the words “could reasonably be expected to”, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. 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.)].

For section 8(1)(a) and/or (b) to apply, the law enforcement matter or investigation must be specific and ongoing. The exemption does not apply where the matter and/or investigation is completed, or where the alleged interference is with “potential” law enforcement matters or investigations [Orders PO-2085, MO-1578].

Police’s Representations

The Police made representations on the application of sections 8(1)(a) and (b). The Police have recently brought to my attention that the law enforcement investigation and matter that was ongoing at the time they made their initial representations is no longer ongoing and has been concluded. The only other representations relating to section 8 submitted by the Police are those relating to the application of section 8(1)(l) which are as follows:

Section 8(1)(l) is used to exempt ten-codes which are used in memo book notes recorded by officers in connection with police investigations. The use of ten-codes by law enforcement is an effective and efficient means of conveying a specific message without publicly identifying its true meaning...

By encoding a particular meaning within a ten-code, the police seek to reduce the ability of those involved in criminal activity from using such knowledge to

circumvent detection by police while committing criminal activities. This information could also be used to counter the actions of police personnel responding to situations and could result in the risk of harm to either police personnel or members of the public with whom the police are involved.

...

Also exempted in several of the records at issue are CPIC access codes (ORI Numbers). As discussed in previous submissions, the release of transmission access codes for the CPIC system could facilitate the commission of an unlawful act or hamper the control of crime. This position has been accepted by the IPC....

Analysis and findings

As stated above, for the exemptions at section 8(1)(a) and (b) to apply, the law enforcement matter or investigation must be specific and ongoing. In this case, the Police have now confirmed that the law enforcement matter and investigation that was ongoing at the time the request and when the Police made its representations is no longer ongoing. As such, I find that sections 8(1)(a) and (b) do apply to exempt the pages of records for which the Police have claimed these sections. The Police applied sections 8(1)(a) and (b) to records which did not include personal information including officers' notes, memo book notes and various reports. I will order this information disclosed.

This office has consistently found that section 8(1)(l) apply to "ten-codes" and CPIC Access codes or ORI Numbers (Orders MO-1672, PO-1665, M-933, M-1004) and I find that this information in the records is exempt from disclosure under section 8(1)(l).

RELATIONS WITH OTHER GOVERNMENTS

The Police have applied the mandatory exemption at section 9(1)(d) to exempt records which are not already dealt with in the above exemptions. Section 9(1) states in part:

(1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c);
or

The purpose of this exemption is “to ensure that governments under the jurisdiction of the *Act* will continue to obtain access to records which other governments could otherwise be unwilling to supply without having this protection from disclosure” [Order M-912].

For this exemption to apply, the institution must demonstrate that disclosure of the record “could reasonably be expected to” lead to the specified result. To meet this test, 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 [*Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

If disclosure of a record would permit the drawing of accurate inferences with respect to information received from another government, it may be said to “reveal” the information received [Order P-1552].

In order for section 9(1) to apply, the institution must demonstrate that the disclosure of the record could reasonably be expected to reveal information which it received from one of the governments, agencies or organizations listed in the section **and** that the information was received by the institution in confidence (Order MO-1581).

Finding

The Police have applied the section 9(1)(d) exemption to two orders from a provincial agency relating to a third party organization. The Police’s representations on the application of the section 9(1)(d) exemption do not relate to these records.

From my review of the records and the nature and context of these records in a police report, I find that disclosure of these two orders could reasonably be expected to reveal information that the Police received in confidence from a provincial agency and as such section 9(1)(d) applies to exempt this information from disclosure.

ORDER:

1. I do not uphold the Police’s fee of \$20,280.00. The Police are ordered to reimburse the \$10,140.00 deposit paid by the appellant.
2. I uphold the Police’s decision to withhold the following pages of record from disclosure in their entirety:

1-1001, 1003-1004, 1006-1007, 1011, 1013, 1017-1018, 1021, 1024-025, 1027-1028, 1032, 1034, 1038-1113, 1120-1125, 1128-1143, 1146-1190, 1192, 1196-1198, 1200-1205, 1208-1210, 1213-1215, 1218-1219, 1222-1225, 1228-1230, 1233 -1235, 1237-1242, 1244-1248, 1251, 1253-1255, 1257-1259, 1261, 1263-1267, 1275, 1277-1278, 1280-1286, 1288-1290, 1292-1293, 1295-1301, 1303-1304, 1307-1310, 1313-1346, 1348-1350, 1352-1362, 1364-1365, 1367-1373, 1375-1376, 1379, 1382-1384, 1386,

1389-1397, 1412-1579, 1581, 1586-1591, 1593-1594, 1596, 1600, 1602-1628, 1630, 1668-1678, 1686-1690, 1693-1694, 1696-1701, 1704-1715, 1717-1719, 1722-1737, 1749- 1760, 1762-1763, 1766-1770, 1772-1774, 1776, 1778-1780, 1783-1785, 1787-1788, 1790-1791, 1793-1795, 1801-1803, 1806-1812, 1814-1844, 1846, 1851-1855, 1858, 1861, 1867-1873, 1875-1893, 1895, 1899-1902, 1905-1906, 1933-1943, 1951-1966, 1968-1970, 1973-1981, 1984-2003, 2015-2023, 2025-2030, 2034-2053, 2055-2112, 2114, 2119-2124, 2126, 2132-2133, 2135-2141, 2143-2160, 2163, 2174, 2201-2211, 2219-2234, 2236-2238, 2241-2248, 2252-2267, 2269-2271, 2283-2293, 2296-2298, 2300-2302, 2304-2306, 2308-2310, 2312-2314, 2317, 2320-2322, 2324-2325, 2335-2344, 2347-2349, 2374-2379, 2381-2394, 2396, 2398, 2400-2406, 2408-2418, 2420-2446, 2448, 2450-2452, 2454-2460, 2462, 2465-2471, 2479-2482, 2484, 2486-2490, 2492, 2496-2497, 2506-2624, 2627-2651, 2654-2664, 2678-2683, 2685-2686, 2688, 2690, 2692-2698, 2700-2735, 2742-2765, 2769, 2772-2774, 2776-2801, 2804-2829, 2837-2840, 2842, 2844-2891, 2894-2929, 2934-2940, 2946-2958, 2960, 2962, 2964-2975, 2980-3003, 3005, 3007, 3009, 3012, 3014-3021, 3027-3036, 3039, 3042, 3047 -3048, 3064-3074, 3076-3080, 3082-3083, 3085-3098, 3100-3101, 3107 , 3109, 3112, 3115, 3122, 3127, 3129-3130, 3134-3140, 3142-3153, 3155-3157, 3160-3161, 3163- 3166, 3168-3169, 3172-3174, 3176-3177, 3179-3193, 3197-3199, 3201-3202, 3208- 3519, 3524-3532, 3534-3537, 3539-3542, 3544, 3546-3550, 3555, 3557-3570, 3579, 3581-3591, 3593, 3596, 3599-3600, 3602-3610, 3614, 3618, 3620-3631, 3636-3637, 3641, 3644-3679, 3684-3690, 3695-3708, 3710, 3712, 3714-3726, 3730-3738, 3742, 3744-3755, 3757, 3759, 3762, 3764-3770, 3773-3785, 3787-3790, 3812-3818, 3820-3828, 3830-3832, 3834, 3836, 3840, 3842, 3848-3849, 3854-3857, 3861-3869, 3871-3881, 3883-3887, 3889-3903, 3906-3907, 3909-3911, 3914-3915, 3918-3919, 3922-3923, 3925-3927, 3929-3938, 3940, 3942-3947, 3954-4264, 4269-4277, 4279-4282, 4284-4287, 4289, 4291-4293, 4295-4296, 4298-4308, 4312-4313, 4317, 4320-4355, 4360-4366, 4372-4384, 4386, 4388, 4390-4401, 4406-4429, 4431, 4433, 4435, 4438, 4440-4447, 4452-4460, 4463, 4466-4467, 4472-4473, 4489-4497, 4499-4508, 4510, 4512-4523, 4525-4527, 4530, 4532, 4534, 4540, 4547, 4552, 4554-4555, 4559-4565, 4567-4583, 4585-4586, 4588-4590, 4593-4595, 4597-4599, 4601-4602, 4604-4618, 4622-4627, 4634-4944, 4949-5043, 5052-5385, 5391-5472, 5479-5784, 5786, 5788- 5869, 5872-6040, 6041-6043, 6053-6067, 6071-6076, 6079, 6081-6082, 6085, 6089, 6091-6095, 6097, 6105, 6110, 6115, 6120, 6126-6141, 6157-6158, 6163, 6168, 6173-6174, 6179-6186, 6190-6191, 6195-6196, 6200-6201, 6205-6206, 6210-6211, 6215-6216, 6220-6221, 6225-6226, 6228-6576, 6581-6633, 6638-6639,6641-6654,6658-6659, 6661-6671, 6674-6691, 6693-6694, 6696-6698, 6700-6703, 6705-6708, 6710-6711, 6714, 6717, 6719-6720, 6722-6723, 6725-6726, 6728-6733, 6735, 6740-6741, 6745-6746, 6748, 6750-6755, 6757, 6759-6761, 6763, 6765-6766, 6768-6774, 6778- 6779, 6781-6783, 6785-6790, 6792-6793, 6796, 6798-6807, 6809-7021, 7032-7034, 7040-7041, 7043-7046, 7050-7053, 7059, 7066-7076, 7078-7081, 7083-7084, 7086-7087, 7089-7090, 7098-7128, 7130-7134, 7136, 7139-7173, 7180-7181, 7183-7184, 7187-7189, 7192-7193, 7197-7200, 7204-7207, 7211, 7214-7215, 7218-7223, 7231-7233, 7235-7345, 7348, 7350-7351, 7354-7431, 7440-7843, 7851-8150, 8156-8159, 8162-8164, 8166-8254, 8257-8258, 8260-8262, 8276-8284, 8289-8290, 8296-8297, 8300, 8303-8317, 8323-8327, 8330-8331, 8335-8336, 8338-8339, 8341-

8342, 8344, 8347, 8351, 8353-8354, 8356-8360, 8365-8367, 8369, 8371-8375, 8389-8391, 8393, 8395, 8398, 8400-8479, 8487-8512, 8519-8520, 8523-8542.

3. I order the Police to disclose the following records (removing ten-codes and CPIC Access codes and ORI Numbers) by June 29, 2005 in part:

1582, 1633, 1639, 1738, 1777, 1781, 1782, 1786, 1789, 1796, 1804, 1893, 1898, 1904, 1972, 1983, 2004, 2127, 2165, 2166, 2172, 2240, 2251, 2272, 2626, 2653, 3044, 3046, 3049, 3051, 3053, 3075, 3108, 3113, 3116, 3117, 3131, 3132, 3170, 3200, 3206, 3792, 3794, 3797, 3799, 3801, 3835, 3843, 3844, 3845, 3858, 3859, 3913, 3916, 3951, 4469, 4471, 4474, 4476, 4478, 4533, 4538, 4541, 4542, 4556, 4557, 4592, 4631, 7026, 8256, 8259, 8264, 8265, 8293, 8319, 8343, 8350, 8355, 8361, 8368, 8480, 8516, 8517.

4. I order the Police to disclose the following records in their entirety by June 29, 2005:

1002, 1005, 1008-1110, 1012, 1014-1016, 1019-1020, 1022-1023, 1026, 1029-1031, 1033, 1035-1037, 1114-119, 1126-1127, 1191, 1193-1195, 1199, 1206-1207, 1211-1212, 1216-1217, 1220-1221, 1226-1227, 1231-1232, 1236, 1243, 1249-1250, 1252, 1256, 1260, 1262, 1268-1274, 1276, 1279, 1287, 1291, 1294, 1302, 1305-1306, 1311-1312, 1347, 1351, 1363, 1366, 1374, 1377-1378, 1380-1381, 1385, 1387-1388, 1398-1411, 1580, 1583-1585, 1592, 1595, 1597-1599, 1601, 1629, 1631-1632, 1634-1638, 1640-1667, 1679-1685, 1691-1692, 1695, 1702-1703, 1716, 1720-1721, 1739-1748, 1761, 1764-1765, 1771, 1775, 1792, 1800, 1805, 1813, 1845, 1847-1850, 1856-1857, 1859-1860, 1862-1864, 1866, 1874, 1894, 1896-1897, 1903, 1907-1932, 1944-1950, 1967, 1971, 1982, 2005-2014, 2024, 2031-2033, 2054, 2113, 2115-2118, 2125, 2128-2131, 2134, 2142, 2161-2162, 2164, 2167-2171, 2173, 2175-2200, 2212-2218, 2235, 2239, 2249, 2250, 2268, 2273-2282, 2294-2295, 2299, 2303, 2307, 2311, 2315-2316, 2318-2319, 2323, 2326-2334, 2345-2346, 2350-2373, 2380, 2395, 2397, 2399, 2407, 2419, 2447, 2449, 2453, 2461, 2463-2464, 2472-2478, 2483, 2485, 2491, 2493-2495, 2498-2505, 2625, 2652, 2665-2677, 2684, 2687, 2689, 2691, 2699, 2736-2741, 2766-2768, 2770-2771, 2775, 2802-2803, 2830-2836, 2841, 2843, 2892-2893, 2930-2933, 2941-2945, 2959, 2961, 2963, 2976-2979, 3004, 3006, 3008, 3010-3011, 3013, 3022-3026, 3037-3038, 3040-3041, 3043, 3045, 3050, 3052, 3054-3063, 3081, 3084, 3099, 3102-3106, 3110-3111, 3114, 3118-3121, 3123-3126, 3128, 3133, 3141, 3154, 3158-3159, 3162, 3167, 3171, 3175, 3178, 3194-3196, 3203-3205, 3207, 3520-3523, 3533, 3538, 3543, 3545, 3551-3554, 3556, 3571-3578, 3580, 3592, 3594-3595, 3597-3598, 3601, 3611-3613, 3615-3617, 3632-3635, 3638-3640, 3642-3643, 3680-3683, 3691-3694, 3709, 3711, 3713, 3727-3729, 3739-3741, 3743, 3756, 3758, 3760-3761, 3763, 3771-3772, 3786, 3791, 3793, 3795-3796, 3798, 3800, 3802-3811, 3819, 3829, 3833, 3837-3839, 3841, 3846-3847, 3850-3853, 3860, 3870, 3882, 3888, 3904-3905, 3908, 3912, 3917, 3920-3921, 3924, 3928, 3939, 3941, 3948-3950, 3952-3953, 4265-4268, 4278, 4283, 4288, 4290, 4294, 4297, 4309-4311, 4314-4316, 4318-4319, 4356-4359, 4367-4371, 4385, 4387, 4389, 4402-4405, 4430, 4432, 4434, 4436-4437, 4439, 4448-4451, 4461-4462, 4464-4465, 4468, 4470, 4475, 4477, 4479-4488, 4498,

4509, 4511, 4524, 4528-4529, 4531, 4535-4537, 4539, 4543-4546, 4548-4551, 4553, 4558, 4566, 4584, 4587, 4591, 4596, 4600, 4603, 4619-4621, 4628-4630, 4632-4633, 4945-4948, 5044-5051, 5386-5390, 5473-5478, 5785, 5787, 5870-5871, 6044-6052, 6068-6070, 6077-6078, 6080, 6083-6084, 6086-6088, 6090, 6096, 6098-6104, 6106-6109, 6111-6114, 6116-6119, 6121-6125, 6142-6156, 6159-6162, 6164-6167, 6169-6172, 6175-6178, 6187-6189, 6192-6194, 6197-6199, 6202-6204, 6207-6209, 6212-6214, 6217-6219, 6222-6224, 6227, 6577-6580, 6634-6637, 6640, 6655-6657, 6660, 6672-6673, 6692, 6695, 6699, 6704, 6709, 6712-6713, 6715-6716, 6718, 6721, 6724, 6727, 6734, 6736-6739, 6742-6744, 6747, 6749, 6756, 6758, 6762, 6764, 6767, 6775-6777, 6780, 6784, 6791, 6794-6795, 6797, 6808, 7022-7025, 7027-7031, 7035-7039, 7042, 7047-7049, 7054-7058, 7060-7065, 7077, 7082, 7085, 7088, 7091-7097, 7129, 7135, 7137-7138, 7174-7179, 7182, 7185-7186, 7190-7191, 7194-7195, 7201-7203, 7208-7210, 7212-7213, 7216-7217, 7224-7230, 7234, 7346-7347, 7349, 7352, 7432-7439, 7844-7850, 8151-8155, 8160-8161, 8165, 8255, 8263, 8266-8275, 8285-8288, 8291-8292, 8294-8295, 8298-8299, 8301-8302, 8318, 8320-8322, 8328-8329, 8332-8334, 8337, 8340, 8345-8346, 8348-8349, 8352, 8362-8364, 8370, 8376-8388, 8392, 8394, 8396-8397, 8399, 8481-8486, 8493, 8503, 8513-8515, 8518, 8521- 8522.

5. In order to verify compliance with Order Provisions 3 and 4, I reserve the right to require the Police to provide me with a copy of those records which are disclosed to the appellant.

Original Signed by: _____
Stephanie Haly
Adjudicator

_____ May 30, 2005