



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2050

Appeal MA-050195-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

A lawyer acting for seven requesters (the requesters) submitted a request to the Toronto Police Services Board (the Police), pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, for the following information:

1. names and badge numbers of all police officers involved in police raids on January 28, 2005 at two identified addresses in the Toronto area (the raids)
2. all occurrence reports, supplementary reports and police officer notes pertaining to the raids.

The Police issued a decision letter in which they advised that "... the matter related to the personal information requested is currently before the courts" and denied access to records responsive to the request pursuant to sections 8(1)(a) (law enforcement matter), 8(1)(f) (right to a fair trial) and 14(1) (personal privacy). In support of their reliance on the section 14(1) exemption the Police cited the application of the presumption in section 14(3)(b) (investigation into violation of law) of the *Act*. In addition, the Police denied access to some information on the basis that it is not responsive to the request.

The requesters (now the appellants) appealed the decision of the Police.

During the course of the mediation stage of the appeal process, the Mediator contacted the Police to discuss the searches they conducted to locate records responsive to the appellants' request. As a result of mediated discussions, the Police agreed to conduct a further search. The Police located additional records and issued a supplementary decision denying access to them, pursuant to sections 8(1)(a) and 8(1)(f) of the *Act*. The Police also identified that portions of the records contain information that is not responsive to the request.

Mediation was unsuccessful in resolving the appeal and the matter was moved to adjudication for an inquiry.

The appellants confirmed that they are appealing the decisions by the Police to deny access to all responsive information pursuant to section 8(1)(a), 8(1)(f) and 14(1). The appellants indicated that they are not interested in the information that the Police have described as non-responsive to their request. Accordingly, the non-responsive information is not at issue in this inquiry.

I commenced my inquiry by issuing a Notice of Inquiry and seeking representations from the Police. The Police submitted representations. I then sought and received representations from the appellants.

RECORDS:

The following ten records remain at issue:

Record #	Description	Withheld or Severed	Sections of the Act
1	Named police officer's notes (1 page)	Withheld	8(1)(a), 8(1)(f) 14(1)
2	Record of Arrest (1 page)	Withheld	8(1)(a), 8(1)(f) 14(1)
3	Record of Arrest (1 page)	Withheld	8(1)(a), 8(1)(f) 14(1)
4	Supplementary Record of Arrest (2 pages)	Withheld	8(1)(a), 8(1)(f) 14(1)
5	Supplementary Record of Arrest (1 page)	Withheld	8(1)(a), 8(1)(f) 14(1)
6	Supplementary Record of Arrest (1 page) [duplicate of record 5]	Withheld	8(1)(a), 8(1)(f) 14(1)
7	Supplementary Record of Arrest (3 pages)	Withheld	8(1)(a), 8(1)(f) 14(1)
8	Police Witness List (7 pages)	Withheld	8(1)(a), 8(1)(f) 14(1)
9	Named police officer's notes (4 pages)	Withheld	8(1)(a), 8(1)(f) 14(1)
10	Named police officer's notes (1 page)	Withheld	8(1)(a), 8(1)(f) 14(1)

DISCUSSION:

PERSONAL INFORMATION

What constitutes "personal information"?

In order to determine which section of the *Act* applies, it is necessary to decide whether the records contain "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;

To qualify as personal information, the information must be about the individual in a personal capacity. Previous decisions of this office have held that information "about" an individual in his or her professional or employment capacity does not constitute that individual's personal information [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

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.)].

The parties' representations

The Police's representations on this issue focus on Records 2, 3, 4, 5, 6, 7 and 8. The Police submit that these records contain the personal information of individuals other than the appellants, which was compiled during the course of a police investigation into a criminal incident. The Police state that these records contain the names of victims and accused individuals arising out of the incident, as well as certain addresses and licence plate numbers searched during the course of the investigation.

The appellants do not provide representations that directly address this issue. However, I note that the appellants have expressed an interest in the information at issue, including the names and badge numbers of the police officers involved in the raids, to pursue civil remedies against these officers.

Analysis and findings

Having carefully reviewed the Police's representations and the contents of Records 2, 3, 4, 5, 6, 7 and 8, I find that all of these records contain the details of the initial involvement of the Police with a law enforcement investigation. I find that all of these records contain the personal information of individuals other than the appellants, including

- the names, addresses, dates of birth, marital status and other personal information of individuals charged in this incident;
- the names, age and other personal information of alleged victims of this incident; and
- the names of witnesses along with other personal information relating to these individuals.

Although the Police have not raised it in their representations, I also find that Records 1, 9 and 10 contain the personal information of individuals other than the appellants. In my view, Record 1 contains personal information to the extent that if this information was revealed, it would be reasonable to expect that an individual may be identified. Records 9 and 10 contain the personal information of identifiable individuals, including their names, addresses and other personal information relating to them.

None of the records contain the personal information of the appellants.

Accordingly, I find that all of the records at issue in this appeal contain the personal information of individuals other than the appellants within the meaning of section 2(1) of the *Act*.

In this appeal the appellants specifically identified at the request stage an interest in the "names and badge numbers" of the police officers involved in the raids. As noted above, the appellants have reaffirmed this interest in their representations.

As set out above, as a general rule, information associated with an individual in a professional or employment capacity may not qualify as the personal information of that individual unless it reveals something of a personal nature "about" the individual.

In this appeal, the records at issue contain information relating to the police officers' involvement in the law enforcement investigation, including their names and badge numbers. However, the Police have not identified the basis for their contention that this specific

information (the names and badge numbers) constitutes the personal information of the named officers.

Where information about an individual involves an evaluation of his or her performance as an employee or an investigation into his or her conduct as an employee, then these references are considered to be the individual's personal information [see Orders P-721, P-939, P-1318, PO-1772 and PO-1912]. However, in this case, despite the appellants' stated intentions to pursue civil action against the police officers, they have asked only for the police officers' names and badge numbers. In my view, this information does not, on its own, constitute the personal information of these individuals. It is reasonable to assume that an officer would produce, as a matter of course, his or her name and badge number at the outset of any search, raid, interview or other similar activity. In my view, this is basic professional information. I am, therefore, satisfied that the names and badge numbers of the police officers contained in these records is not their personal information.

INVASION OF PRIVACY

Operation of section 14

Having determined that the records contain the personal information of individuals other than the appellant, the mandatory exemption at section 14(1) requires that the Police refuse to disclose this information unless one of the exceptions to the exemption at sections 14(1)(a) through (f) applies. In my view, the only exception which could have any application in the present appeal is set out in section 14(1)(f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy within the meaning of section 14(1)(f). Section 14(2) provides criteria 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 in section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue falls within the ambit of section 14(4) or if the "compelling public interest" override provision at section 14 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Police take the position that disclosure of the information in the records is presumed to constitute an unjustified invasion of privacy under the presumption in section 14(3)(b) of the *Act*, which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

is 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.

The parties' representations

The Police state the records at issue in this appeal were compiled and are identifiable as part of an investigation into a possible violation of law under the *Criminal Code*, specifically charges of kidnapping and forcible confinement. At the time of making these representations, the Police also submitted that the charges against the individuals identified in the records are still before the courts and the release of the information at issue could hinder any prosecution and the outcome of the court cases.

The appellants do not offer representations that address the application of the section 14(3)(b) presumption. The appellants' representations suggest that their interest in the records relates to a desire to identify the police officers involved in the investigation so that they can initiate civil proceedings against them.

Analysis and findings

Based on my review of the records and the Police's representations on the application of section 14(3)(b), I am satisfied that the Police compiled all of the information at issue in the records as part of an investigation into a possible violation of law under the *Criminal Code*. It appears that charges of kidnapping and forcible confinement were laid as a result of this investigation.

Having found that the section 14(3)(b) presumption applies, I am precluded from considering any of the factors weighing for or against disclosure under section 14(2), because of the *John Doe* decision.

Section 14(4) and the "public interest override" at section 16 are not applicable in the circumstances of this case.

Accordingly, I find the personal information at issue in this appeal exempt under section 14(1) of the *Act* since disclosure of it would be an unjustified invasion of personal privacy and the exception to the exemption at section 14(1)(f) therefore does not apply.

As identified above, the names and badge numbers of the police officers involved in these matters does not constitute the personal information of these officers. Further, in my view, disclosing the names and badge numbers of the officers would not disclose the personal information of the other individuals identified in the records.

Section 4(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. The key question raised by section 4(2) is one of reasonableness. Where a record contains exempt information, section 4(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information.

In the circumstances of this case, I am satisfied that it is possible to sever the names and badge numbers of the police officers involved in this matter, and to disclose this information to the appellants without disclosing any personal information.

Accordingly, I find that section 14(1) does not apply to the names and badge numbers of the identified police officers. I will consider below the application of sections 8(1)(a) and (f) to this information.

LAW ENFORCEMENT

General

The Police have claimed that sections 8(1)(a) and (f) of the *Act* apply to the information remaining at issue, the names and badge numbers of the police officers involved in the Police investigation.

These sections read:

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

- (a) interfere with a law enforcement matter;
- (f) deprive a person of the right to a fair trial or impartial adjudication;

In order for a record to qualify for exemption under section 8(1)(a), the matter to which the record relates must first satisfy the definition of the term “law enforcement” found in section 2(1) of the *Act*, which states:

“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 exemptions 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.)].

For the purpose of both sections 8(1)(a) and (f), the Police 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.)].

It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Section 8(1)(a)

In order for this exemption to apply there must be a law enforcement matter in question that is specific and ongoing. 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].

The parties’ representations

The Police’s representations under this exemption are brief. The Police reassert that the information contained in the records at issue relates to a police investigation in which several individuals were charged with kidnapping and forcible confinement. The Police reiterate that these charges remain before the courts.

The appellants do not offer representations that are responsive to the application of this exemption.

Analysis and findings

I acknowledge that the records at issue were created for what appears to be a specific and ongoing law enforcement matter. However, the information that remains at issue is limited to the names and badge numbers of the police officers involved in the investigation. I am not satisfied that the Police have provided the kind of detailed and convincing evidence required to

establish a reasonable expectation of interference in the ongoing law enforcement matter in the event this discrete information is disclosed.

Accordingly, I find that section 8(1)(a) does not apply to exempt the names and badge numbers of the police officers referenced in the records.

Section 8(1)(f)

To obtain the protection of this exemption the Police must show that there is a “real and substantial risk” of interference with the right to a fair trial or impartial adjudication in the event of disclosure. The exemption is not available as a protection against remote and speculative dangers. [Order P-948; *Dagenais v. Canadian Broadcasting Corp.* (1994), 120 D.L.R. (4th) (S.C.C.); Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.)].

The parties’ representations

The Police state that disclosure of the records “could reasonably deprive the victims [of] the right to a fair trial or impartial adjudication.” The Police submit that if the appellants received the information at issue and proceed with civil actions against the police officers it “could be detrimental to the ongoing [criminal] case.” The Police suggest that counsel for the defendants in the criminal proceedings “could manipulate the situation to their clients’ advantage, rendering the innocent without justice.” The Police state that what occurred during the police raids at the two identified addresses is “irrelevant” with respect to the prosecution of the criminal trials. The Police submit that the “real and substantial risk” would be that the criminal case is “in any way hindered by virtue of the appellants’ claims.” The Police state that the facts in the criminal trial cannot be “tampered or tainted by malicious claims” from the appellants.

In response, the appellants state that they have a right to the names of the police officers so that they can pursue their civil remedies against these officers in response to the actions taken by them against the appellants during the course of the investigation.

Analysis and findings

The only information remaining at issue is the names and badge numbers of the police officers involved in the Police investigation. In my view, the suggestion by the Police that the disclosure of this information presents a real and substantial risk of interference with the right to a fair trial or impartial adjudication is speculative. The Police make general arguments about how a future (undefined) possible civil action by the appellants against the police officers involved in this matter may hinder the criminal case against other accused individuals. However, other than broad statements referring to possible “manipulation” or “tampering”, the Police provide no specific evidence of how this could reasonably be expected to occur if the names and badge numbers of the officers are disclosed. In my view, the Police have failed to provide the necessary detailed and convincing evidence to establish this possible harm.

Although I appreciate that disclosure of some of the information at issue in the records could interfere with the right to a fair trial or impartial adjudication, I have already found this information exempt under that section of the *Act*.

Accordingly, I find that section 8(1)(f) does not apply to exempt the names and badge numbers of the police officers referenced in the records.

Having found that none of the exemptions apply to the names and badge numbers of the police officers, I will order the Police to disclose this information to the appellant. In the circumstances, the Police could do so by either providing the appellants with severed copies of the records, disclosing only the names and badge numbers of the police officers, or by some other means, such as simply identifying the officers by name and badge number.

ORDER:

1. I order the Police to disclose to the appellants the names and badge numbers of the police officers set out in the records at issue in this appeal by **June 5, 2006** but not before **May 30, 2006**.
2. In order to verify compliance with provision 1 of this order, the Police are required to provide me with copies of all documents delivered to the appellants in response to this order.

Original signed by: _____
Bernard Morrow
Adjudicator

_____ April 28, 2006