



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2037

Appeal MA-050423-1

Cobourg Police Services Board



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NATURE OF THE APPEAL:

The Cobourg Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to procedures maintained by the Police in relation to the following:

- The investigation of property trespassing and laying of charges by a Police Officer;
- The conduct of a Police Officer during the case investigation;
- Filing a complaint against a police investigation.

The Police responded by granting access in full to the record responsive to the third part of the request, the Public Complaint Procedure. Access was denied to the record responsive to the first and second parts of the request on the basis of the exemptions found in sections 8(1)(c) (law enforcement) and 8(1)(e) (endanger life or safety) of the *Act*.

The requester (now the appellant) appealed the Police's decision to deny access to the records.

During mediation, the Police identified that there is only one record responsive to the first and second parts of the request, and they provided a description of the responsive record to the appellant. The sole responsive record is the Criminal Investigation Management Plan (the CIMP).

Further mediation was not possible, and this appeal was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the Police, initially, and the Police provided brief representations in response. I then sent the Notice of Inquiry, along with a complete copy of the Police's representations, to the appellant, who also provided brief representations.

In his representations the appellant confirms that he is only interested in the procedures relating to the investigation of and laying of charges respecting a specific offence, and the conduct of police officers during the investigation of that type of offence. The record identified by the Police as responsive to the request deals with a number of subjects which the appellant has indicated he is not interested in – matters dealing with different types of offences, duties and responsibilities of other staff members, general training and record-keeping practices, and support processes. Based on the appellant's representations, I find that these other portions of the CIMP are not responsive to the request and they are, accordingly, not at issue in this appeal.

RECORDS:

The records at issue in this appeal are the portions of the CIMP that contain the procedures relating to the investigation of and laying of charges for a specific offence, and the conduct of police officers during the investigation of that type of offence. These consist of portions of pages 1, 2, 8 and 20 and all of pages 3 through 7. For greater certainty, I have highlighted the responsive portions of the record on the copy of the record which is being sent to the Police with a copy of this order.

DISCUSSION:

LAW ENFORCEMENT

General

The Police have claimed that sections 8(1)(c) and (e) of the *Act* apply to the records. These sections read:

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

- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;

In order for a record to qualify for exemption under these sections, 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 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.)].

For the purpose of section 8(1)(c), 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.)].

In the case of section 8(1)(e), the Police must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

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)(c)

With respect to the section 8(1)(c) exemption, in order to meet the "investigative technique or procedure" test, the Police must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public [Orders P-170, P-1487]. Furthermore, the techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures [Orders PO-2034, P-1340].

Representations

The Police take the position that the information at issue qualifies for exemption under section 8(1)(c). The Police identify that the information at issue consists of police procedures contained within the CIMP, and then state that the information "contains policy on the management of criminal investigation addressing responsibilities, methodology, tactics and tracking". The Police also state that the nature of the information is significant and sensitive to the organization. Finally, the Police attach to their representations a copy of Order M-655, in which the section 8(1)(c) exemption was found to apply to certain information.

Findings

In order for a record to qualify for exemption under section 8(1)(c), 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*. The information at issue concerns the management of criminal investigations, and I am satisfied that it satisfies the definition of "law enforcement" within the meaning of the legislation.

As set out above, the Police must also establish that it is reasonable to expect that the harms set out in section 8(1)(c) will ensue if the information is disclosed. In this case, the Police must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. It is not sufficient for the Police to take the position that these harms are self-evident from the record.

In my view, the Police have not identified how or why the disclosure of the information at issue could reasonably be expected to hinder or compromise the effective utilization of any investigative techniques or procedures. The representations of the Police simply identify the nature of the information contained in the record, and indicate that it is sensitive and significant, without stating why this is so.

I have reviewed Order M-655, which was referred to by the Police. Although it upholds the application of section 8(1)(c) to the records at issue in that appeal, which were portions of police officer's notes and occurrence reports, it is unclear to me how relevant this order is to the circumstances of this appeal. The one aspect of that order which may assist is the adjudicator's finding that the exemption applied on the basis of her review of the record at issue in that appeal.

I too have reviewed the portions of the record at issue in this appeal. They consist of general procedures and processes to be followed by investigators in the course of their investigation of certain incidents. In a very general sense, they do contain investigative procedures. However, on my review of the records, I am satisfied that the general procedures contained in them are generally known to the public, and the Police have failed to provide evidence in support of the position that these procedures are not generally known to the public.

Furthermore, the Police have not provided me with evidence to support the position that the disclosure of these records would disclose any investigative technique or procedure to the public that could reasonably be expected to hinder or compromise its effective utilization. My review of the records at issue also does not support the position that this harm could reasonably be expected to occur from the disclosure of the records.

Accordingly, I am not satisfied that the records qualify for exemption under section 8(1)(c).

Section 8(1)(e)

Representations

In support of their position that the information at issue qualifies for exemption under section 8(1)(e), the Police also identify that the information is contained within the CIMP and is a police procedure that "contains policy on the management of criminal investigation addressing responsibilities, methodology, tactics and tracking". In addition, the Police state that the nature of the information, if released, would "put officers and/or other persons at risk."

Findings

Although the Police have claimed the application of section 8(1)(e) to the record, and state that the information, if released, would put officers and/or other persons at risk, they have not identified how or why the alleged harm could reasonably be expected to occur if the information

at issue were to be disclosed. The Police's representations simply identify the nature of the information contained in the record, and state that it is sensitive and significant.

I have carefully reviewed the portions of the record at issue in this appeal which consist of general procedures and processes to be followed by investigators in the course of their investigation of certain incidents. On my review of the records and the representations of the Police, I am not satisfied that the disclosure of the specific information sought by the appellant could reasonably be expected to result in the harm identified in section 8(1)(e). Although the Police take the position that this section applies, they have not identified how the disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

I am mindful of the fact that the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context. I am also aware that, in order to satisfy section 8(1)(e), the Police must simply provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In the circumstances of this appeal, I am not satisfied that the Police have established the requisite reasonable basis for such a belief. Accordingly, I am not satisfied that the information at issue qualifies for exemption under section 8(1)(e).

Having found that the information sought by the appellant does not qualify for exemption under sections 8(1)(c) or (e), I will order that the responsive portions of the record be disclosed to the appellant.

ORDER:

1. I order the Police to disclose those portions of the record which I have found to be responsive to the request (as highlighted on the attached copy of the record sent to the Police) to the appellant by **April 25, 2006**.
2. I reserve the right to require the Police to provide me with a copy of the information which is disclosed in accordance with Provision 1.

Order Signed by _____
Frank DeVries

March 31, 2006 _____