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

ORDER MO-2123

Appeal MA-050374-2

Halton Regional Police Services Board

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NATURE OF THE APPEAL:

The Halton Regional Police (the Police) received a request under the *Act* for access to a complete copy of the "personal" notes taken by a police officer that relate to the events discussed in a particular police report. The request was submitted by the requester's legal counsel who indicated that the request was being made in preparation for his client's parole hearing.

The Police issued a decision in which they refused to confirm or deny the existence of records pursuant to sections 8(3) and 14(5) of the *Act*.

The requester (now the appellant) appealed the Police's decision, and Appeal MA-050374-1 was opened. During the mediation stage of this appeal, the Police withdrew their reliance on sections 8(3) and 14(5), and confirmed the existence of the notes in question. The Police agreed to issue a revised decision to the appellant. Accordingly, the Commissioner's office closed Appeal MA-050374-1.

The Police then issued a revised decision, denying access to the notebook entries of a named investigating police officer pursuant to the law enforcement exemptions in sections 8(1)(c) (investigative techniques and procedures), 8(1)(d) (confidential source), 8(1)(e) (life or physical safety), 8(1)(g) (law enforcement intelligence information) and 8(1)(l) (commission of an unlawful act or control of crime), as well as the personal privacy exemption in section 14(1). In support of its section 14(1) exemption claim the Police cited the application of the presumptions in sections 14(3)(a) (medical history), 14(3)(b) (investigation into violation of law) and 14(3)(h) (racial origin) of the *Act* and the factors in sections 14(2)(f) (highly sensitive) and 14(2)(i) (unfair damage to reputation) of the *Act*.

The appellant appealed the Police's revised decision to deny access to the police officer's notes, and Appeal MA-050374-2 was opened.

During the mediation stage, the appellant advised the mediator that he does not wish to pursue access to police codes or non-responsive information in the records. Accordingly, these portions of the records are no longer at issue in this appeal. The appellant confirmed with the mediator that he wishes to pursue access to all information relating to himself but does not wish to pursue access to the names or personal information of any other individuals.

During mediation, the Police advised the mediator that access to the remaining portions of the records would continue to be withheld pursuant to the exemptions claimed in their revised decision letter. Accordingly, no further mediation was possible.

The mediator also raised the possible application of sections 38(a), read with the section 8(1) exemptions claimed as set out above, and 38(b), read with section 14(1), to the records at issue. The Police subsequently agreed that these exemptions should be considered for the records remaining at issue.

I commenced my inquiry by issuing a Notice of Inquiry, seeking representations from the Police. The Police submitted representations in response. The Police subsequently issued a supplementary decision letter in which they agree to provide the appellant with partial access to a named police officer's notebook entries.

I then issued a second Notice of Inquiry, seeking representations from the appellant. I included with my Notice of Inquiry a complete copy of the representations submitted by the Police. The appellant chose to not submit representations. However, in a telephone conversation with a staff person in the Commissioner's office the appellant's representative reiterated that his "objective is to determine if there is anything about his client in the blacked out areas in the officer's notes. [The appellant] is not interested in any other information. Only the [Information and Privacy Commissioner/Ontario] can make [this] clear."

RECORDS:

There are seven pages of records at issue comprised of the undisclosed portions of a police officer's notebook entries.

DISCUSSION:

PERSONAL INFORMATION

In order to determine whether section 38(b) 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 where 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 list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under one of the paragraphs in section 2(1) 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.)].

The Police state that the "information contained in these records consists of the personal information of the appellant and the various other individuals involved in this incident, including associates."

On my review of the records at issue, I am satisfied that they contain the appellant's personal information, pursuant to paragraphs (a), (b), (c), (d), (e) and (h) of the definition of "personal information" in section 2(1) of the *Act*, including his name, date of birth, address, fingerprint number, criminal history and personal views and opinions. I also find that the records contain the personal information of at least three other identifiable individuals, pursuant to paragraphs (a), (b), (d), (e) and (h) of the definition of "personal information" in section 2(1). In the case of one individual, this includes his name, date of birth, address, criminal history and personal opinions or views. With regard to a second individual, this includes his name, date of birth, address and licence number. In the case of a third individual, this includes his name, date of birth and criminal history.

In conclusion, I find that the undisclosed information in the records consists of the personal information of the appellant and at least three other identifiable individuals.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT

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

Under section 38(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

In this case, the institution relies on section 38(a) in conjunction with the law enforcement exemptions in sections 8(1)(c), (d), (e), (g) and (l).

The portions of section 8(1) that are at issue in this appeal 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;
>
> (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

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.)].

Except in the case of section 8(1)(e), where section 8 uses 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.)].

In the case of section 8(1)(e), the institution 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*].

Due to the nature of the information and the circumstances at issue in this appeal, I will first address the possible application of the section 8(1)(g) exemption.

Section 8(1)(g): law enforcement intelligence information

Introduction

The term "intelligence information" has been interpreted as follows in previous decisions of this office:

> Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from information compiled and identifiable as part of the investigation of a specific occurrence [Orders M-202, MO-1261, MO-1583].

Representations

The Police submit that the information contained in the records is intelligence information, collected by the Police in a covert manner through the use of various techniques, including surveillance, associations with people, confidential sources and contact with informants. The Police state that the records containing this information are maintained in a highly confidential area with restricted access to it. The Police submit that the information gathered is used to track traditional organized crime.

As stated above, the appellant chose to not submit representations despite being given an opportunity to do so.

Analysis and findings

In the circumstances, I am satisfied that the Police gathered the information in the records in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of organized criminal activity. Therefore, I conclude that disclosure of the records could reasonably be expected to reveal law enforcement intelligence information and section 8(1)(g) applies. Unfortunately, I am unable to provide more detailed reasons for my finding since to do so would reveal confidential intelligence information.

I note that the Police have provided the appellant with all of his personal information contained in the records. Accordingly, under the circumstances, I am satisfied that the Police exercised their discretion appropriately under section 38(a) in refusing the appellant access to the remaining information at issue.

As I have found the information at issue in the records exempt from disclosure under the section 38(a)/8(1)(g) exemption, it is not necessary for me to consider the application of section 38(a), read in conjunction with sections 8(1)(c), 8(1)(d), 8(1)(e), 8(1)(l) or section 38(b), read in conjunction with section 14.

ORDER:

I uphold the decision of the Police to deny access to the severed information in the records at issue.

Original signed by: November 21, 2006
Bernard Morrow
Adjudicator