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

ORDER MO-2252

Appeal MA-050444-2

Toronto Police Services Board

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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to the *Safe Streets Act* (the *SSA*). More specifically, the request was for:

> All available data on the total number of offences issued by the Toronto Police under the *Safe Streets Act* since its enactment in 2000, including but not limited to:
>
> - the section of the Act under which each particular offence was issued,
> - the division to which the offence-issuing officer was attached,
> - the badge number of the offence-issuing officer,
> - and any available information on the outcome of the offence, – i.e. guilty, fee paid, charge withdrawn, jail term, etcetera.

The Police issued an interim decision in which they stated that they would disclose information relating to the total number of charges laid under the *SSA*, for the time period requested, by section and by unit. However, the Police also stated that they were not able to "extract [the information] by using an officer's badge number." The Police provided the requester with a fee estimate of $840.00 which was based on their estimate that it would take 14 hours to adapt the computer program to produce the information.

The requester subsequently wrote to the Police and made a request that the fees be waived and provided representations in support. The Police denied the request for a fee waiver.

The requester and the Police continued their discussions in an attempt to narrow the scope of the request and with a view to reducing the fee. The result was that the Police agreed to reduce the fee by $120.00 and waived the cost associated with providing the requester with the information related to the total number of charges laid under the *SSA*. A revised fee estimate was issued in which the fee was estimated at $720.00 on the basis of 12 hours of work to adapt the computer program to produce the information to respond to the request.

The requester subsequently agreed to remove from the scope of the request any information relating to the outcome of the charges under the *SSA* and another fee estimate was issued as follows:

> Search Time
>
> | | |
> |---|---|
> | Total computer time | 4 hours |
> | Time charge per our computer | $15.00 per 1/4 hour |
> | Total Estimated Fee | $240.00 |

The requester agreed to the fee estimate and paid the fee in full. Accordingly, the fee for disclosure of the record is not an issue in this appeal.

The Police then issued a final decision to the requester as follows:

> Access is granted to the total number of offences issued by the Toronto Police Service under the Safe Streets Act since 2000. This information includes the section of the Act for specific offences and the issuing Divisions.
>
> Access is denied to the badge numbers of the issuing officers. This decision has been made for the following reasons:
>
> …
>
> It has been determined, upon examination of the records described in your request, that they meet the criteria for exclusion under Bill 7 [the *Labour Relations and Employment Statute Law Amendment Act, 1995*, which added sections 52(2) and 52(3) to the *Act*], and therefore no longer fall under the jurisdiction of the Municipal Freedom of Information and Protection of Privacy Act. Consequently, the Freedom of Information Unit does not have the authority to release institutional documents of this nature.

No exemptions under the *Act* were claimed by the Police with respect to the information relating to the badge numbers of the police officers. Records for which the exclusion was not claimed were then released to the appellant pursuant to this decision.

The requester (now the appellant) appealed the Police's decision. In her notice of appeal, the appellant stated that she was appealing the decision of the Police to withhold access to the badge numbers of the police officers responsible for issuing the offences under the *SSA*.

During the mediation stage of the appeal process, the appellant raised the "scope of the request" as an issue in the appeal. The appellant's position was summarized in the Mediator's Report as follows:

- the data provided relating to offences issued by Division did not contain data for the year 2004; and
- the data provided relating to the section of the *SSA* under which each particular offence was issued was not broken down on a yearly basis, i.e. 2000, 2001, 2003, 2004, 2005 and 2006; and
- the data for the badge numbers of the offence-issuing officer, was not provided on a yearly basis, i.e. 2000, 2001, 2002, 2003, 2004, 2005 and 2006.

The appeal was not resolved during mediation. As a result, the appeal was moved to the inquiry stage of the appeal process, and I was assigned the role of the adjudicator. I initially began my inquiry by issuing a Notice of Inquiry to the Police. I invited the Police to provide me with representations on the issues set out in the notice and on any other issues that they felt were

relevant to this appeal. As a result of the discussions that took place during meditation, I made scope of the request an issue and the Notice of Inquiry included this issue.

The Police issued a revised decision letter following receipt of the Notice of Inquiry. In that revised decision letter, the Police decided to release the information that the appellant requested, with one exception. As a result, the appellant was provided with the information that was missing for the year 2004 and all the data disclosed was provided on an annual basis for all years from 2000 to 2006. The only information not provided to the appellant was the badge numbers for the issuing police officers as the Police continued to claim that this information was excluded from the scope of the *Act*.

Following the issuance of this revised decision letter, a member of my staff contacted the appellant to determine whether she was satisfied with the information provided to her. The appellant advised my office that she continued to seek access to the badge numbers of the issuing officers and that she wanted to proceed with the appeal.

As a result, I asked the Police to submit representations. I received representations from the Police and provided the appellant with a complete copy of those representations. I then invited the appellant to submit representations. I received representations from the appellant. Following my review of the appellant's representations, I instructed a staff member in my office to contact the appellant to seek some clarification with respect to her representations relating to the scope of the request. The appellant provided me with supplementary representations in response.

RECORDS:

The records are three printouts of data from a Police database containing the following information, on an annual basis from 2000 to 2006:

Printout #1- the total number of offences issued under the *SSA* by issuing officer (pages 1-27);

Printout # 2 - the total number of offences issued under the *SSA* by the Division (page 28);

Printout #3 - the total number of offences used under the *SSA* by the relevant section of the *SSA* (page 29).

The Police have severed from printout #1 the badge numbers of the police officers responsible for issuing the offences. The appellant has appealed this severance.

DISCUSSION:

SCOPE OF THE REQUEST/RESPONSIVENESS OF RECORDS

As noted above, the appellant made the scope of the request an issue at the mediation stage of this appeal. Her position was summarized in the Mediator's Report, the relevant portions of which are quoted above. Also, as noted, a number of deficiencies in the records already provided to the appellant were rectified by additional disclosures during the adjudication process.

For example, the appellant's representations explain that the reason she made scope of the request an issue at mediation was that the Police had failed to provide her with data that related to the year 2004 and some of the information requested was not provided on an annual basis. The appellant also wanted the information relating to the offences issued provided to her to be separated by individual officer. The appellant acknowledges in her representations that these concerns have been resolved by the delivery of the revised decision letter and disclosure of the additional records, and I will not deal with these issues any further.

Despite the resolution of these issues, the appellant's representations contained the following statement:

> The record simply excludes the badge number of the individual officers and *fails to provide the data in the requested formulation*. (emphasis added)

In light of this statement, scope of request remained an issue in this appeal, and I invited the appellant, by way of supplementary representations, to provide greater detail on this issue.

In those supplementary representations, she states:

> The format I requested and the only format which would permit analysis of the data, would set out each individual offence in chronological order. While it is not specified in my request, I submit that the individual offence should be identified by its date of issue or, at a minimum, by the year in which it was issued. (The data released by the TPS to date has already been provided on an annualized basis.) Each offence issued should be described by the section of the *SSA* under which it was issued, the division to which the offence-issuing officer was attached and the badge number of the offence-issuing officer. If each offence is detailed in its own row of data cells, there will therefore be 18,167 rows in a record formatted to correspond to my request, as that is the total number of *SSA* offences in the record at issue.
>
> Any other format, including the record at issue providing separated annual totals of offences issued by individual officers, by division and by section of the *SSA*, does not allow analysis of the data. I therefore request that the data be provided by the Toronto Police Service according to the requested formulation, as set out above.

The question to be determined is whether the Police have properly interpreted the appellant's request and provided data in a satisfactory format or whether the data should be disclosed to the appellant in the format outlined in her supplementary representations.

The Police submit that they took a liberal interpretation of the appellant's request and that they had a number of discussions with the appellant with a view to clarifying the request. They submit:

The scope of the request at issue was very specific and statistical in nature. The requester asked for:

> *"All available data on the total number of offences issued by Toronto Police under the Safe Streets Act since its enactment in 2000, including but not limited to;*
> - *The section of the Act under which each particular offence was issued,*
> - *The divisions to which the offence – issuing officer was attached,*
> - *The badge numbers of the offence-issuing officer."*

The portion of the request regarding the outcome was removed, as outlined in the Notice of Inquiry.

The [Police] sent the requester a comprehensive list which outlined the section of the [*SSA*] used for the specific offences and how many offence notices were issued by each Division and by badge number (with the numbers removed). The requester was also provided initially (at no charge) a list of the totals for each year since 2000.

The Police then state that a data error was discovered that explained why the information for the year 2004 was omitted from the records that were initially disclosed to the appellant. The Police continued:

> In light of this discovery, and to reflect our honesty in identifying the mistake, the appellant was then issued a subsequent decision letter and a 27 page breakdown which reflected each year (including 2004) by Division and by each Section of the SSA as well as how many tickets were issued per officer, at no charge.
>
> Therefore, it is with absolute certainty, that based on the original request and after many conversations between the Analyst (prior to her absence from the Unit for the better part of 2006) the Acting Coordinator and the appellant, who did not raise any concern as to the formatting of the request, which she had already seen, that the TPS provided the appellant with records responsive to her request.

Findings and Analysis

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

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;

> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> . . . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

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

Previous orders of this office have established that to be responsive, a record must be "reasonably related" to the request. In Order P-880, former Adjudicator Anita Fineberg stated:

> In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to a request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request. (See also Order P-1051)

Adjudicator Fineberg also made the following general statement regarding the approach an institution should take in interpreting a request, which was cited with approval by Commissioner Ann Cavoukian in Order PO-1730:

> ... the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2) of the *Act* to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records. It must outline the limits of the search to the appellant.

I agree with this approach and adopt it for the purposes of this appeal. However, I note that section 17(1)(b) also imposes an obligation on the requester. It states that the requester must "provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record."

I have noted that a number of issues that were initially related to the scope of the request have been resolved during adjudication to the appellant's satisfaction. I have already quoted the following passage from the appellant's supplementary representations but repeat it here for ease of reference. In my opinion, this passage raises the only remaining issue regarding the scope of the request:

> The record simply excludes the badge number of the individual officers and *fails to provide the data in the requested formulation*. (emphasis added)

The appellant states that the information requested should be in a format that links the offence to the section of the *SSA* under which an offence is issued, the issuing police officer, the date and the division to which the police officer is assigned.

Having carefully reviewed the representations and the other documentation provided by the parties, I find that even on a liberal interpretation of the scope of the request, it cannot reasonably bear the interpretation that is advanced by the appellant in her supplementary representations. I am satisfied that the Police adopted a reasonable interpretation of the appellant's request.

The request is very general in nature. I find that reasonable efforts were made by the Police to clarify the request and, in particular, the format in which the information was requested during the many discussions between the parties at the request stage of this process and during mediation. It was not until the appellant submitted supplementary representations that the issue of the format of the data was raised. The supplementary representations had already been preceded by initial discussions with the Police, mediation and the submission of initial representations. If the appellant required the requested information in a specific format, it was incumbent on her to describe this format in sufficient detail at the earliest possible stage of the request in order to give the Police a reasonable opportunity to respond to the request. By clarifying the request at the supplementary representations stage, the appellant did not provide the Police with such an opportunity.

Accordingly, I find that the Police have properly interpreted the scope of the appellant's request and that the appellant was provided the requested information in the format contemplated and clarified by the appellant at the time the request was made.

As a result, the only information that falls within the scope of the request that has not been disclosed to the appellant is the police officers' badge numbers, information that the Police submit is excluded from the *Act*.

LABOUR RELATIONS AND EMPLOYMENT RECORDS

The Police take the position that the badge numbers that appear in the records are excluded from the *Act* as they fall within section 52(3)3. Their position is that, although the badge numbers by themselves are regularly made available to the public, in the context of this record disclosure of the badge numbers constitutes performance-related information, excluding them from the *Act*.

Section 52(3)3 states:

> Subject to subsection (4), this *Act* does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*.

In order for the badge numbers to be excluded from the *Act* under section 52(3)3, the Police must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

Representations

The Police did not specifically address the three parts of the test set out in section 52(3)3. In their general representations, the Police submit:

> The TPS recognizes that officers' badge numbers are public information. Officers' badge numbers appear on documents that are given directly to the public, such as summonses for offences committed. However, there is a vast difference between the issuance of one ticket, to one individual, and the cumulative gathering of performance-related information as it relates to a single officer.
>
> One of the issues under appeal relates to records containing the badge numbers of each officer who has issued a Provincial Offences Act (POA) ticket under the SSA since its inception in 2000. This information would therefore identify how many tickets an individual officer has issued. It should be noted that in essence, the requester has received this information void of one component, the identities of the officers. To be specific, the appellant received 27 pages with 9 columns titled in order; Badge, 2000, 2001, 2002, 2003, 2004, 2005, 2006, Grand Total. Information under the "Badge" column was removed. Information under each

> year column including the "Grand Total" column display total numbers for each missing badge number. In other words, it is very clear how many tickets an individual officer issued for each year. The omitted information (the badge numbers) is the identities of each officer. … However, should this direct-link to an individual officer's performance (issuing a POA ticket) be released, it would be in complete violation of the amendments made to the Municipal Freedom of Information and Protection of Privacy Act (the Act) as a result of Bill 7.

The Police also argue:

> The information already provided to the appellant is Service-related material. The TPS agrees that such information is public. (Due to limited resources, only a portion of POA offences are reported in the Toronto Police Service Annual Report, SSA offences not being one of them.) Where the appellant has requested the specific badge numbers, the record becomes employment-related as the context changes this public information into a request involving an officer's individual work performance.
>
> Such information is used by Management to assess an officer's productivity, work performance and forms part of the annual employee appraisal process.
>
> Where the context of the request has been altered, it identifies the relationship between the employee and the Service. As an employer, the TPS provides guidelines and sets standards to maintain integrity, honesty, respect and reliability, both externally and internally. These are vital components that make a TPS officer and are relayed throughout the Service via management. Disclosure of an individual officer's work performance would not only contravene the Act, but it would directly impact this employer-employee relationship.

The Police then quote a passage from *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, (2001), 55 O.R. (3d) 355 (Ont. C.A.) regarding the requirement under part 3 of the test that an institution must have an "interest" in the labour-relations or employment related matter that is the subject of the records at issue.

The appellant submits:

> The TPS appears to be arguing that the release of a badge number will result in the identification of the individual officers by their names and that this identification of individual officers by names introduces a "direct-link" to the officers' performance, namely issuing a Provincial Offences Act ticket. Such a "direct-link" to the officers' performance would therefore "be in complete violation" of the amendments to the Act under Bill 7 "with respect to certain record relating to labour relations and employment matters."
>
> The TPA does not provide any support for this argument.
>
> …

> As has been documented above, my request to the TPS was the first of its kind, necessitating a new computer program. This data was not previously included in the TPS annual reports. The Statistical Analysis Unit advised that **"they are not able to extract by using an officer's badge number."** (Exhibit "A")
>
> As the record did not exist at the time of the request, and as the TPS, the institution bearing the burden of proof in this case, has not provided any evidence to the contrary, I submit that the records were not collected, prepared, maintained or used by the institution or on its behalf.
>
> …
>
> The statements of the TPS throughout the course of the appeal indicate that there has in fact not been any "identified need" for statistical data under the *SSA* (Exhibit "B"). This contradicts TPS representation above that "such information" already makes up part of the performance review of individual police officers and forms part of the annual employee appraisal process.

Findings and Analysis

As noted above, in order for section 52(3)3 to be applicable, the Police must demonstrate that all three parts of the test set out in that section have been met.

Part 1: collected, prepared, maintained or used

I am satisfied that the Police have established that the information at issue was collected, prepared, maintained or used by them and that the first requirement for the application of section 52(3)3 has been met.

Part 2: in relation to meetings, consultations, discussions or communications

The representations of the Police do not deal specifically with this requirement. However, they state that the information at issue is collected "in relation to" the police officers' annual performance appraisal process.

Despite the fact that the Police have not provided any representations on this point, I am willing to accept that the police officers' annual performance appraisal process involves meetings, consultations, discussions or communications. Therefore, the issue before me is whether or not the police officers' badge numbers in the context of a record that includes information on the number of offences or tickets issued pursuant to the *SSA* is "in relation to" the meetings, consultations, discussions or communications that relate to the police officers' annual appraisal process. In this context, I am required to determine the meaning of the words "in relation to".

This issue has implications for broader issues of the public accountability and the transparency of police services and the police complaint process. It is well known that police officers are required to produce their badge number as a matter of course at the outset of any search, raid,

interview or similar activity. It should be noted that previous orders of this office have described the badge numbers of police officers as basic professional information (see Order MO-2050). In fact, as is noted by the Police in their representations, police badge numbers are routinely disclosed in the context of other police records such as tickets, occurrence reports and police officers' notes. In my opinion, a police officer's badge number is a tool of accountability. It assists members of the public in identifying a police officer as an individual with special powers and authority. It is also an essential tool in the public complaints process particularly in those cases where the names of the police officers are not available to the members of the public with whom the police interact.

In Order MO-2024-I, Senior Adjudicator John Higgins dealt with the meaning of the words "in relation to" in the context of a request for access to the amounts paid by a municipality to a named law firm for legal services. The municipality relied on section 52(3)1 of the *Act* to claim that the records were excluded on the basis that the records at issue were collected and maintained "in relation to" proceedings. In that order, the Senior Adjudicator stated:

> The consequence of a finding that section 52(3)1 applies is a serious one – the total exclusion of the record from the scope of the access and privacy provisions of the *Act*. In this case, as the appellant points out, the record relates to the expenditure of public funds to defend a legal action. This type of information has a strong connection to government accountability, which the Supreme Court of Canada refers to as an "overarching" purpose of access legislation (see *Dagg v. Canada (Minister of Finance)* (1997), 148 D.L.R. (4th) 385 (S.C.C.)). In my view, this purpose, which relates to the right of public access to government-held records identified in sections 1 and 4 of the *Act*, must be kept in mind in assessing the proper meaning of "in relation to" in this case.
>
> Another relevant factor to consider in assessing the meaning of "in relation to" is the stated intent and goal of the *Labour Relations and Employment Statute Law Amendment Act*, which added section 52(3) to the *Act*. The long title of this Bill identified this goal as to "restore balance and stability to labour relations and to promote economic prosperity".
>
> As noted above, the term "in relation to" in section 52(3) has previously been defined as "for the purpose of, as a result of, or substantially connected to" [Order P-1223]. In my view, meeting this definition requires more than a superficial connection between the creation, preparation, maintenance and/or use of the records and the labour relations or employment-related proceedings or anticipated proceedings. For example, the preparation of the record would have to be more than an incidental result of the proceedings, and would have to have some substantive connection to the actual conduct of the proceedings in order to meet the requirement that preparation (or, for that matter, collection, maintenance and/or use) be "in relation to" proceedings. This interpretation would also apply under sections 52(3)2 and 3, which require that the collection, preparation, maintenance and/or use of the records be "in relation to" either negotiations or anticipated negotiations, or to meetings, consultations, discussions or

> communications about labour relations or employment-related matters in which the institution has an interest.

In that appeal, there was evidence before the Senior Adjudicator that but for the proceedings the record at issue would never have been created. However, he found that, even in those circumstances, the relation between the record and the proceedings was too remote to satisfy the requirement in part two that the information be "in relation to" the proceedings.

I adopt this approach for the purposes of this appeal.

I have carefully reviewed the records that contain the issuing police officers' badge numbers. I do not accept the evidence of the Police that this information is "in relation to" the annual performance appraisal of their officers. In my opinion, the badge numbers reveal little or no information about an individual officer's professional performance or employment related matters.

Moreover, on its face, the record does not reveal any performance-related information. Further, it is not reasonably possible to draw any performance-related conclusions from the numbers of tickets issued by an officer at any given time. An officer assigned to one division may not have the opportunities to issue offences under the *SSA* if there is little activity that would qualify as an offence under the *SSA* in that division. For example, in Division 52 the total number of offences issued over the 7 year period covered by these records was 5,792. In Division 21 the total number of offences issued in that same period was 5. In my view, in these circumstances, this information would not permit the Police or the appellant to draw any performance-related conclusions.

Apart from the Police's blanket assertion that this information is performance-related and is used to assess productivity and work performance, the Police have not provided me with any evidence to support that assertion. Nor is there sufficient evidence to support a conclusion that this record relates more generally to the employer–employee relationship as is asserted by the Police. I accept the position of the appellant in this appeal that, contrary to the statements made by the Police in their representations, there is no "direct-link" between the officers' badge number and the officers' performance.

I am also persuaded by the appellant's argument that when the Police initially responded to her request they stated that "they were not able to extract the data that she requested by using the officers' badge numbers." In subsequent correspondence responding to the appellant's request for a fee waiver, the Police state that they did not "currently have a query format available which would extract the requested information, and as such, as indicated by the Analysis Support unit, a new query format would be required before this information could be provided." The appellant submits that this contradicts the position taken by the Police that this information "already makes up part of the performance review of individual police officers and forms part of the annual employees' appraisal process."

I have carefully reviewed the representations of the parties, and the records themselves. Although I am willing to accept that the annual appraisal process of a police officer would

involve meetings, consultations, discussion or communications, I am not satisfied that the badge numbers of the police officers issuing offence notices under the *SSA* is "in relation to" a police officer's annual performance appraisal, or to any meetings, consultations, discussions or communications in that regard. In my view, this record is a compilation of data regarding a number of specific police incidents. The characterization of the police officers' badge numbers as professional information that is normally disclosed does not change by virtue of being contained in this compilation of data, nor does the inclusion of the badge number persuade me that the data in this record is "in relation to" the appraisal process.

In these circumstances, I find that the Police have not satisfied the second requirement for the application of section 52(3)3.

As all three requirements must be met before I can find that the section applies, I find that section 52(3)3 does not apply and the police officers badge numbers severed from pages 1 to 27 of the records are not excluded from the *Act*.

ORDER:

1. I uphold the Police's interpretation of the scope of the appellant's request.

2. I do not uphold the Police's decision that the police officers' badge numbers are excluded from the *Act* under section 52(3)3.

3. I order the Police to provide the appellant with a decision on access to the police officers' badge numbers that were severed from the responsive records under Part II of the *Act*, treating the date of this order as the date of the request.

Original signed by: December 14, 2007
Brian Beamish
Assistant Commissioner