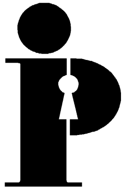

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2365

Appeal MA07-26-2

City of Toronto

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "Toronto Security Policies regarding arrest, handcuffing, requesting identification and investigating citizens."

The City issued a decision letter to the requester that stated:

> The Facilities and Real Estate Division has not provided the Corporate Access and Privacy Office with any responsive records. We must, therefore, conclude that no such records exist.

The requester appealed the City's decision to this office, and submitted that records responsive to his request should exist. As a result, this office opened appeal MA07-26 to determine whether the City had conducted a reasonable search for records responsive to the request.

During the mediation stage of the appeal process, the City informed the mediator that its Facilities and Real Estate Division had located responsive records. Consequently, this office closed appeal MA07-26.

The City then issued a new decision letter in response to the request, denying access to these records pursuant to the discretionary exemptions in section 8 (law enforcement) and 13 (danger to safety or health) of the *Act*:

> Section 8 has been relied upon to sever a record that would reveal investigative techniques and procedures currently in use or likely to be used in law enforcement.
>
> Section 13 has been relied upon to sever a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The requester (now the appellant) appealed the City's new decision to this office and the present appeal (MA07-26-2) was opened.

This appeal was not resolved in mediation and was moved to the adjudication stage of the appeal process for an inquiry. I started my inquiry by issuing a Notice of Inquiry to the City, inviting it to submit representations. In response, the City submitted representations to this office.

I then issued the same Notice of Inquiry to the appellant, along with a copy of the City's representations. The appellant provided representations to this office that stated that the City had failed to provide a proper index of records, and that it was, therefore, difficult to respond to the City's representations because its description of the records at issue was generic:

> The City is attempting to use a blanket response for all of the records. Without a detailed index or description, it is impossible to know what representations apply to which records, as the City has not bothered to specify. Even if the City's

> submissions justify non-access to specific records in their possession, the City cannot use the blanket response to cover all records in their possession, especially given that they will not provide a detailed index as to what the records are.

In response, I issued a letter to the appellant stating that although I agreed that the City should have provided him with a proper index of records at an earlier stage in this process, the information provided to him in the City's representations and the Notice of Inquiry was sufficient to enable him to submit representations on the issues remaining in the appeal. Consequently, I again invited him to submit representations on whether the exemptions claimed by the City apply to the records at issue. In response, the appellant submitted representations to this office.

RECORDS:

In its representations, the City identified the following three records as remaining at issue in this appeal:

> Records 1 to 4: Baton Policy and Procedure
> Records 5 to 23: Code of Conduct for Security Officers
> Records 63 to 95: Recruit 2006: Corporate Security and Life Safety Policy and Procedure Manual (Officer Safety Training) – Use of Force

However, upon closer review, it is evident that there are four records at issue. The Baton Policy and Procedure, which the City has identified as comprising "Records 1 to 4" (i.e., pages 1 to 4) is only two pages in length (pages 1 to 2). The subsequent two pages (3 to 4) are a Handcuff Policy and Procedure. The next record is the "Security Officer – Code of Conduct" (pages 5 to 23). The final record, which the City identifies as the "Recruit 2006: Corporate Security and Life Safety Policy and Procedure Manual (Officer Safety Training) – Use of Force" (pages 24 to 95) can be more briefly described as the "Officer Safety Training Manual."

Together, the four records at issue total 95 pages. The City grouped these records together and numbered the pages consecutively from 1 to 95.

In its representations, the City states that it is no longer denying access to pages 24 to 62 of its Officer Safety Training Manual. However, it further states that it is continuing to deny access to pages 63 to 95 of that record.

The following chart summarizes the records remaining at issue in this appeal:

Record	Page numbers	City's decision	Exemption claimed
Baton Policy and Procedure	1 to 2	Withheld in full	Sections 8(1)(c), (e), (i) and (l) Section 13
Handcuff Policy and Procedure	3 to 4	Withheld in full	Sections 8(1)(c), (e), (i) and (l) Section 13
Security Officer – Code of Conduct	5 to 23	Withheld in full	Sections 8(1)(c), (e), (i) and (l) Section 13
Officer Safety Training Manual	24 to 95	Withheld in part (only pages 63 to 95 remain at issue)	Sections 8(1)(c), (e), (i) and (l) Section 13

DISCUSSION:

LAW ENFORCEMENT

In its representations, the City claims that the discretionary exemptions in sections 8(1)(c), (e), (i) and (l) of the *Act* apply to the withheld information in the records at issue. These provisions state:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (c) reveal investigative techniques or 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;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

(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)

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* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

THREAT TO SAFETY OR HEALTH

The City also claims that the discretionary exemption in section 13 of the *Act* applies to the withheld information in the records at issue. This provision reads as follows:

> A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

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 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.)].

An individual's subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003].

The term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

The parties' representations

The City's representations

At the outset of its representations, the City provides some background information about its "Corporate Security and Life Safety" unit. In particular, it states that this unit provides a number of services, including:

- General security services (e.g., responding to building alarms and patrolling facilities that are owned and leased by the City);
- Access control services (e.g., maintaining and programming access cards and card readers); and
- Security control centre operations (e.g., monitoring video surveillance system and elevator system)

The City further states that "Corporate Security Services" is involved with the development and implementation of emergency and fire safety plans.

It submits that the records at issue in this appeal "constitute the full level of physical training and policies that security officers follow with respect to the provision of services."

The City then goes on to provide representations on the section 8(1) exemptions that it has claimed. It submits that the discretionary exemptions in sections 8(1)(c), (e), (i) and (l) apply to the withheld information in the records at issue:

> The City acknowledges that on first reading, the records may not appear to reveal information about specific "investigative techniques or procedures" used by security officers, however, taken as a whole, they do provide the advice or guidance on a number of activities relating to investigations including appropriate interviewing and communicating techniques, see for example, Record 90. Such information is not generally known to the public. If this information were to be disclosed, it could compromise its effective utilization by the City's security officers during their investigations.
>
> As indicated previously, these records constitute the full level of physical training and policies that security officers must follow with respect to the provision of services. The records contain, for example, details of when and how batons should be used (Records 1 to 4); how to security [sic] their security posts (Record 21); how to properly assess their position in a confrontation; how to control a situation; when and how to use physical force; knowing the mechanisms of excited delirium and restraint asphyxia, etc., (Records 63-95).
>
> It is the City's view that if such information were to fall into the hands of unscrupulous individuals, they could use the information to take counter measures against the (predetermined) actions/conduct of security officers in the performance of their duties or they may find possible “deficiencies” that they could use to their advantage.
>
> This could reasonably lead to harms to the security officers and/or to the property being secured by the officers or hamper the ability of the officers to control crime, and which in turn could lead to risks to those who work in and visit City buildings.

The City further submits that section 13 of the *Act* applies to the withheld information in the records at issue:

> For this exemption to apply, it must be demonstrated that the disclosure of the record “could reasonably be expected to” lead to the specific result and the reasons for resisting disclosure are not frivolous or exaggerated.
>
> Many aspects of the work of security officers, like that of police officers, such as responding to alarms, patrolling City facilities, protecting property, etc. can be inherently dangerous, depending on the circumstances. There are many media articles about security officers or guards being the victims of attacks by individuals and in some cases losing their lives in the line of duty.

> It is not always possible to predict the outcome of any incident or situation but being able to anticipate and "predetermine" the actions needed to be taken can diminish the risks of harm.
>
> As indicated above, the disclosure of the information contain [sic] in the records remaining at issue could place the security officers at risk when performing their duties as it could allow unscrupulous individuals to take "countermeasures" against the security officers.
>
> It is the City's view that the disclosure of such details as when and how to use force, how to maintain control of a situation, etc. could reasonably be expected to seriously [sic] the safety of the City's security officers.

The appellant's representations

In his representations, the appellant submits that the discretionary exemptions in sections 8(1)(c), (e), (i) and (l) or section 13 of the *Act* do not apply to the withheld information in the records at issue:

> The City is attempting to use a generic, blanket response for all of the records. Further, the discussion they do provide is generic and speculative. Order MO-1808, Appeal MA020218-1, from the Information and Privacy Commissioner is particularly apt:
>
>> In order to qualify, as an "investigative technique or procedure" under section 8(1)(c), the institution must show that disclosing the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization, The section 8(1)(c) exemption normally will not apply where the technique or procedure is generally known to the public (Orders P-170, P-1487). In addition, the techniques or procedures must be "investigative." The exemption will not apply to "enforcement" techniques or procedures (Orders PO-2034, P-1340).
>>
>> Under both section 8(1)(c) and section 8(l)(1), 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.)).
>>
>> 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*).

> The City has almost made reference to section 8(1)(e) and (l) and section 13. However, it is submitted the same logic is applicable. 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.
>
> Even if the City's submissions justify non-access to specific records in their possession, the City cannot use the blanket response to cover all records. For each record, there must be "detailed and convincing" evidence. And, as per the quote above, the exemption does not apply to enforcement techniques.

Analysis and findings

Public accountability purpose

In assessing whether the withheld information in the records at issue should be disclosed, it is important to bear in mind the public accountability purpose of the *Act*, which is set out in section 1(a). This provision states, in part, that one purpose of the *Act* is to provide a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. In accordance with the public accountability purpose set out in section 1(a) of the *Act*, the public has a right to access the information in the records at issue in this appeal, subject to necessary exemptions that should be limited and specific.

For the reasons that follow, I find that the information withheld by the City in the records at issue does not qualify for exemption under sections 8(1)(c), (e), (i) and (l) or section 13 of the *Act*, except for limited and specific portions.

Section 8(1)(c): investigative techniques or procedures

Under section 8(1)(c) of the *Act*, an institution may refuse to disclose a record if the disclosure could reasonably be expected to reveal investigative techniques or procedures currently in use or likely to be used in law enforcement.

In order to meet the "investigative technique or procedure" test in section 8(1)(c), the institution 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].

In addition, the techniques or procedures must be "investigative." The exemption will not apply to "enforcement" techniques or procedures [Orders PO-2034, P-1340].

The City must provide "detailed and convincing" evidence to prove that the section 8(1)(c) exemption applies to the withheld information in the records at issue.

In its representations, the City concedes that "at first reading," the records at issue do not appear to reveal "investigative techniques and procedures," as contemplated by section 8(1)(c) of the *Act*. However, it submits that the records as a whole contain information "on a number of activities relating to investigations including appropriate interviewing and communicating techniques" and cites an example on page 90 of the Officer Safety Training Manual. The City further asserts that this information is not generally known to the public and its disclosure "could compromise its effective utilization by the City's security officers during their investigations."

I have reviewed the records at issue and in my view, they do not generally reveal "investigative techniques or procedures," as contemplated by section 8(1)(c) of the *Act*.

For example, the Baton Policy and Procedure and the Handcuff Policy and Procedure, which the City has withheld in their entirety, set out rules that the City's security officers must follow with respect to these tools. Both records contain information relating to the usage/storage, maintenance, deployment and misuse of these tools and also include a section on training. The City's security officers are permitted to use batons and handcuffs in violent situations in which they are required to use force. In my view, the information in these records relates to "enforcement" tools (i.e., batons and handcuffs), not "investigative" techniques or procedures. Consequently, I find that the information in these two records does not qualify for exemption under section 8(1)(c) of the *Act*.

Moreover, the Security Officer – Code of Conduct, which the City has withheld in its entirety, sets out specific "standards of conduct" that security officers are required to follow. It contains information under several headings, including: Conduct, Alertness, Attendance, Illness, Scheduling, Confidentiality, Officer Conduct, Reporting for Duty, Professional Relationships, Safety, General Protocols, Security Posts, Honesty, Photo Identification Badges, and Pay Cheque or Payroll Questions. In my view, this information is generally administrative in nature and does not qualify as "investigative techniques or procedures." Consequently, I find that the information in this record does not qualify for exemption under section 8(1)(c) of the *Act*.

Finally, the portions of the Officer Safety Training Manual that remain at issue (pages 63 to 95) include information under the following headings: Use of Force, Use of Force Model, In-custody Death, Communications, and Officer Safety. In my view, the sections on the use of force, in-custody deaths and officer safety reveal "enforcement" and "safety" techniques and procedures, not "investigative" techniques and procedures. Consequently, I find that most of the withheld information in this record does not qualify for exemption under section 8(1)(c) of the *Act*.

The City, however, claims that the Officer Safety Training Manual contains "appropriate interviewing and communicating techniques." In particular, it cites information on page 90, which includes a paragraph on the use of "open-ended questions," as an example of an investigative technique or procedure that falls within the section 8(1)(c) exemption. The "appropriate interviewing and communicating techniques" referred to by the City are part of the

"Communications" section of this Officer Safety Training Manual (pages 79-90). In my view, most of the information in this section sets out generic communications techniques that security officers are expected to use in their work, not investigative techniques and procedures, as contemplated by section 8(1)(c).

However, in Order MO-2207, Adjudicator Bernard Morrow considered whether information relating to the use of "open-ended questions" in a Toronto Transit Commission (TTC) training manual for its special constables was exempt under section 8(1)(c) of the *Act*. He found that several sections of this record, including "The Use of Open Ended Questions When Interviewing" (pages 39 to 42) qualified for exemption under that provision:

> In my view, the aforementioned sections contain information that is "investigative" in nature, revealing investigative techniques and procedures that TTC Special Constables currently use to carry out their assigned duties. I am satisfied that these sections of the record contain information that, if disclosed to the public, could reasonably be expected to hinder or compromise the effective utilization of these techniques and procedures. Accordingly, I am satisfied that these sections of Record 2 qualify for exemption under section 8(1)(c).

The section on the use of "open-ended questions" in the Officer Safety Training Manual at issue in this appeal is only one paragraph in length and appears to be considerably less detailed than the section at issue in the TTC training manual in Order MO-2207. However, I agree with Adjudicator Morrow's reasoning and adopt it for the purposes of the appeal before me. I find that the section on the use of open-ended questions on page 90 of the Officer Safety Training Manual reveals an investigative technique or procedure that the City's security officers use when carrying out their duties. I am satisfied that disclosing this technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. Consequently, I find that this information qualifies for exemption under section 8(1)(c) of the *Act*.

On the whole, however, I find that the City has not provided the "detailed and convincing" evidence required to satisfy the section 8(1)(c) exemption. In short, I conclude that the section 8(1)(c) exemption does not apply to the information withheld by the City in the records at issue, with the exception of the section on the use of open-ended questions on page 90 of the Officer Safety Training Manual.

Section 8(1)(i): security of a building, vehicle, system or procedure

Under section 8(1)(i) of the *Act*, an institution may refuse to disclose a record if the disclosure could reasonably be expected to endanger the security of one or more of the following, for which protection is reasonably required:

- a building; or
- a vehicle carrying items; or
- a system or procedure established for the protection of items

The City must provide "detailed and convincing" evidence to prove that the section 8(1)(i) exemption applies to the withheld information in the records at issue.

The City's representations do not clearly explain how or why the section 8(1)(i) exemption applies to the withheld information in the records at issue. As noted above, the City states that these records contain information relating to a number of its security officers' duties, including how batons should be used; how to secure their posts; how to properly assess their position in a confrontation; how to control a situation; when and how to use physical force; and knowing the mechanisms of excited delirium and restraint asphyxia.

It then submits that if the withheld information in these records were to fall into the hands of unscrupulous individuals, they could use the information to take "counter measures" against the actions of security officers, or they may find possible "deficiencies" that they could use to their advantage. It further asserts that this "could reasonably lead to harms to the security officers and/or *to the property* being secured by the officers or hamper the ability of the officers to control crime, and which in turn could lead to risks to those who work in and visit City buildings." (Emphasis added.)

The City's reference to its "property" appears to be a reliance on the part of the section 8(1)(i) exemption that allows an institution to refuse to disclose a record if doing so could reasonably be expected to endanger the security of a building, for which protection is reasonably required. The records at issue do not contain specific information about identifiable buildings, such as floor plans. However, it is evident from the background section of the City's representations and the records themselves that security officers play a role in protecting and safeguarding municipal buildings and other facilities.

In my view, the City has not provided the "detailed and convincing" evidence required to establish that disclosure of the withheld information in these records could reasonably be expected to endanger the security of a building, for which protection is reasonably required, as contemplated by section 8(1)(i) of the *Act*.

For example, the City submits that the records contain information about how security officers are required to "secure their posts" and appears to suggest that "unscrupulous individuals" could somehow use this information to cause harm to "the property" being secured by its officers. Section 12 of the Security Officer – Code of Conduct (pages 21 to 22) sets out the rules that security officers must follow when they are staffing "security posts," many of which are presumably located in municipal buildings.

Sections 12.8 and 12.9, for instance, set out rules that security officers must follow with respect to taking breaks when staffing a security post. However, they do not include any information that could reasonably be expected to endanger the security of a building, such as the actual work schedules of security officers and the specific times they take their breaks when staffing a security post in a building. They merely set out the general rules regarding breaks that security officers are required to follow.

I find, therefore, that the City has not provided the "detailed and convincing" evidence required to establish that the withheld information in the records at issue could reasonably be expected to endanger the security of a building, for which protection is reasonably required. I would note as well that it has not provided any evidence to support the other parts of the section 8(1)(i) exemption, namely that disclosure of this information could reasonably be expected to endanger the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

In short, I conclude that the information that the City has withheld from the records at issue does not qualify for exemption under section 8(1)(i) of the *Act*.

Section 8(1)(l): commission of an unlawful act or control of crime

Under section 8(1)(l) of the *Act*, an institution may refuse to disclose a record if the disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

The City must provide "detailed and convincing" evidence to prove that the section 8(1)(l) exemption applies to the withheld information in the records at issue.

As noted above, the City submits that if the withheld information in the records at issue were to fall into the hands of unscrupulous individuals, they could use the information to take "counter measures" against the actions of security officers, or they may find possible "deficiencies" that they could use to their advantage. It further asserts that this "could reasonably lead to harms to the security officers and/or to the property being secured by the officers or *hamper the ability of the officers to control crime*, and which in turn could lead to risks to those who work in and visit City buildings." (Emphasis added.)

In my view, the City has not provided the "detailed and convincing" evidence required to establish that disclosure of the withheld information in these records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

The duty to prevent the commission of unlawful acts and to control crime lies primarily on police officers in Toronto. However, the City's security officers are responsible for protecting and safeguarding municipal buildings and other facilities. Consequently, it could be argued that they play a role, albeit a secondary one, in preventing the commission of unlawful acts and controlling crime.

I am not persuaded, however, that disclosing the withheld information in the records at issue could reasonably be expected to lead to the harms contemplated by section 8(1)(l) of the *Act*. In my view, the City's submission that unscrupulous individuals "could use the information to take 'counter measures' against the actions of security officers, or they may find possible 'deficiencies' that they could use to their advantage," amounts to speculation of possible harm, which is not sufficient to establish that the section 8(1)(l) exemption applies to the withheld information in the records at issue.

In addition, the City's submissions are not supported by the content of the records at issue. For example, the City submits that the records contain information about how "batons are to be used" by its security officers. However, the Baton Policy and Procedure does not contain any information on the specific techniques that the City's security officers use when deploying this tool. On the contrary, the training section in this record makes it clear that the City's security officers would learn such techniques in an "approved course." Consequently, I am not persuaded that disclosing such information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

In short, I conclude that the information that the City has withheld from the records at issue does not qualify for exemption under section 8(1)(l) of the *Act*.

Section 8(1)(e): life or physical safety and section 13: threat to safety or health

Under section 8(1)(e) of the *Act*, an institution may refuse to disclose a record if the disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. In addition, section 13 of the *Act* allows an institution to refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual. These two discretionary exemptions are closely related, and I have decided to consider them together in assessing whether they apply to the information that the City has withheld from the records at issue.

The quality and cogency of the evidence that an institution must adduce to prove that the section 8(1)(e) or section 13 exemptions apply is not as stringent as with respect to the other exemptions in section 8(1) of the *Act*, which require "detailed and convincing evidence." In the case of section 8(1)(e) or section 13, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, it 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.)].

As noted above, with respect to section 8(1)(e), the City submits that if the withheld information in the records at issue were to fall into the hands of unscrupulous individuals, they could use the information to take "counter measures" against the actions of security officers, or they may find possible "deficiencies" that they could use to their advantage. It further asserts that this "*could reasonably lead to harms to the security officers* and/or to the property being secured by the officers or hamper the ability of the officers to control crime, and which in turn *could lead to risks to those who work in and visit City buildings*." (Emphasis added.)

With respect to section 13, the City states that the work of security officers can be "inherently dangerous" and submits that "many media articles" have been published about security officers being attacked or even losing their lives while carrying out their duties. In addition, as with its submissions on section 8(1)(e), it asserts that disclosure of the withheld information in the records at issue could place its security officers "at risk", because it could allow unscrupulous individuals to take "countermeasures" against them. It further submits that "disclosure of such

details as when and how to use force, how to maintain control of a situation, etc. could reasonably be expected to seriously [sic] the safety of the City's security officers."

I acknowledge that the City's security officers engage in work that is potentially dangerous, and that they undoubtedly face risks to their safety while carrying out their duties. With limited and specific exceptions, however, I am not persuaded that disclosure of the withheld information in the specific records at issue in this appeal could reasonably be expected to lead to the harms contemplated by sections 8(1)(e) or 13 of the *Act*.

Three of the records at issue in this appeal – the Baton Policy and Procedure, the Handcuff Policy and Procedure and the Officer Safety Training Manual – contain information that relates, either directly or indirectly, to the use of force by the City's security officers.

In Order MO-2207, Adjudicator Morrow considered whether two TTC documents that dealt with the use of force and handcuffing policies, procedures and techniques was exempt under section 8(1)(e) of the *Act*. He described the information at issue as follows:

> … Record 1 is comprised of two documents that deal with the use of tactical handcuffing, empty hand control and tactical positioning all with regard to the safe handling of subject individuals. One is a "Training Precis" prepared in April 1999 by the TTC's Corporate Security Department on the use of force, empty hand control and tactical handcuffing and the other is an excerpt from a "Policy, Procedure and Rules Manual" issued by the TTC's Corporate Security Department in February 1999 concerning the handcuffing of persons in custody.

Adjudicator Morrow found that most of the information in those documents qualified for exemption under section 8(1)(e) of the *Act*:

> I am satisfied that, for the most part, Record 1 contains information that if disclosed could reasonably be expected to endanger the life or physical safety of a TTC Special Constable. Specifically, significant portions of Record 1 contain detailed information about the appropriate use of force, the use of handcuffs and empty hand tactics for controlling dangerous individuals. In my view, disclosing this information could reasonably be expected to put a Special Constable at risk of physical harm in performing his or her law enforcement duties. Therefore, I find this information exempt under section 8(1)(e). This conclusion is consistent with other decisions of this office regarding the application of section 8(1)(e) [see, for example, Order MO-1779].
>
> However, I find the following sections of the Training Precis portion of Record 1 not exempt under section 8(1)(e):
>
> - Cover page
> - Introduction
> - Part II - Care and Maintenance of Handcuffs

- Portions of Part III – Policy and Procedure, including a drawing of handcuffs with parts labelled
- References to *Criminal Code* Sections 25 and 26
- Definition of Handcuffs

> This information is either generic in nature or available in the public domain. Accordingly, I find that this information is not exempt under section 8(1)(e).

I agree with Adjudicator Morrow's general analysis and will consider it in the context of the appeal before me.

Baton Policy and Procedure and Handcuff Policy and Procedure

The Baton Policy and Procedure and the Handcuff Policy and Procedure, which the City has withheld in their entirety, set out rules that the City's security officers must follow with respect to these tools. Both records contain information relating to the usage/storage, maintenance, deployment and misuse of these tools and also include a section on training. The City's security officers are permitted to use batons and handcuffs in violent situations in which they are required to use force.

In my view, the contents of these two records are distinguishable from the information that was at issue in Order MO-2207. As noted above, the records at issue in that order included information about the "use" of handcuffs. I have carefully reviewed the Baton Policy and Procedure and the Handcuff Policy and Procedure, and although they both contain sections on "usage/storage," "deployment," and "misuse," they do not actually set out any specific techniques or tactics that the City's security officers should employ when using or deploying these law enforcement tools. On the contrary, the "training" section in each of these records makes it clear that the City's security officers would learn such techniques or tactics in an "approved course."

In short, these two records do not reveal specific techniques or tactics for using force involving batons or handcuffs. I am not persuaded, therefore, that disclosure of the withheld information in the Baton Policy and Procedure or the Handcuff Policy and Procedure could reasonably be expected to endanger the life or physical safety of the City's security officers or any other person or seriously threaten the safety or health of an individual. In my view, the City has not established a basis for concluding that endangerment could reasonably be expected to result from disclosure of this information. Consequently, I find that these two records do not qualify for exemption under sections 8(1)(e) or 13 of the *Act*.

Officer Safety Training Manual

The other two records at issue in this appeal are the Security Officer – Code of Conduct and the Officer Safety Training Manual. I will first assess whether the information in the Officer Safety Training Manual qualifies for exemption under sections 8(1)(e) or 13 of the *Act*. The City has withheld information from this record that appears under the following headings: Use of Force, Use of Force Model, In-custody Death, Communications, and Officer Safety (pages 63 to 95).

As noted above, in Order MO-2207, Adjudicator Bernard Morrow found that certain information in two TTC documents relating to "the appropriate use of force" and "empty hand tactics" by TTC special constables qualified for exemption under section 8(1)(e) of the *Act*. However, he found that other information did not qualify for exemption under that provision because it was either generic in nature or available in the public domain.

The first portion of the "Use of Force" section (pages 63 to 66) provides a commentary on the provisions of the *Criminal Code* that the City's security officers must be aware of when contemplating the use of force. In my view, disclosing a commentary on specific provisions of a publicly available statute such as the *Criminal Code* could not reasonably be expected to endanger the life or physical safety of the City's security officers or any other person or seriously threaten the safety or health of an individual. Consequently, I find this information does not qualify for exemption under sections 8(1)(e) or 13 of the *Act*.

The next portion of the "Use of Force" section in the Officer Safety Training Manual sets out background information on a "Use of Force Model" that the City's security officers should apply in potentially violent situations ("Model Development" – pages 67 to 68). This portion also includes a diagram of the "National Use of Force Framework", which consists of a concentric circle that is intended to assist law enforcement officers in determining the degree of force, if any, that they could use to address potentially violent situations (page 69).

The information in these portions of the "Use of Force" section of the Officer Safety Training Manual is derived from a "National Use of Force Framework" that was developed by the Canadian Chiefs of Police (CCOP). There is a substantial amount of information relating to this framework in the public domain. For example, the diagram of the "National Use of Force Framework," which the City has withheld from disclosure, is available on the CCOP's website: http://www.cacp.ca/media/library/download/266/Useofforcemodel.pdf In addition, the 13-page "National Use of Force Framework" paper published by the CCOP in 2000 is available in its entirety on the website of the International Council of Police Representative Associations: http://ilecnet.org/Standards/Canada%20National%20Use%20of%20Force%20Model%202000.pdf

Given that there is substantial information about the "National Use of Force Framework" in the public domain, I am not persuaded that disclosing the background information ("Model Development" – pages 67 to 68) or the diagram of this framework (page 69) in the Officer Safety Manual could reasonably be expected to endanger the life or physical safety of the City's security officers or any other person or seriously threaten the safety or health of an individual. In my view, the City has not established a basis for concluding that endangerment could reasonably be expected to result from disclosure of this information. Consequently, I find that this information does not qualify for exemption under sections 8(1)(e) or 13 of the *Act*.

The next portion of the "Use of Force" section in the Officer Safety Training Manual contains strategies and techniques that security officers should consider for handling potentially violent situations, including "Situational Assessment" (pages 70 to 71), "Subject Behaviour" (pages 72 to 73), and "Officer Responses" (pages 73 to 75). Most of these strategies and techniques are

derived from the publically available "National Use of Force Framework" and are largely a matter of common sense. It is difficult to see how disclosing this information could reasonably be expected to endanger the life or physical safety of the City's security officers or any other person or seriously threaten the safety or health of an individual. Consequently, I find that most of this information do not qualify for exemption under sections 8(1)(e) or 13 of the *Act*.

However, the section on "Officer Responses" includes specific techniques for employing force against violent individuals, particularly the use of physical force and weapons (pages 74 to 75). Although this information is based on the publically available "National Use of Force Framework" diagram, it includes detailed instructions for employing force that may not be widely known. In my view, the City's concern that "unscrupulous individuals" could use this information to take "counter measures" against the actions of its security officers is not frivolous or exaggerated. I am satisfied that disclosing this information could reasonably be expected to endanger the life or physical safety of the City's security officers, and it therefore qualifies for exemption under section 8(1)(e) of the *Act*.

The remaining withheld information in the Officer Safety Training Manual appears under the following headings: In-custody Death (pages 76 to 79), Communications (pages 80 to 90), and Officer Safety (pages 91 to 95).

The information in the section on "In-custody Death" is aimed at assisting the City's security officers in preventing the deaths of individuals they take into their custody. Clearly, the primary purpose of this information is to prevent the accidental deaths of these individuals, not to protect the City's security officers from harm. In addition, the information in the section on "Communications" (pages 80 to 90) is highly theoretical and academic in nature. In short, I am not persuaded that disclosing the information in these two sections could reasonably be expected to endanger the life or physical safety of the City's security officers or any other person or seriously threaten the safety or health of an individual. Consequently, I find that this information does not qualify for exemption under sections 8(1)(e) or 13 of the *Act*.

Most of the information in the section on "Officer Safety" (pages 91 to 95) is generic in nature and expresses principles that are largely a matter of common sense. I am not persuaded that disclosing such information could reasonably be expected to endanger the life or physical safety of the City's security officers or any other person or seriously threaten the safety or health of an individual. However, this section also includes seven concepts or principles of officer safety (pages 93 to 95). In my view, the City's concern that "unscrupulous individuals" could use this information to take "counter measures" against the actions of its security officers, is not frivolous or exaggerated. I am satisfied that disclosing this information could reasonably be expected to endanger the life or physical safety of the City's security officers, and it therefore qualifies for exemption under section 8(1)(e) of the *Act*.

Security Officer – Code of Conduct

The Security Officer – Code of Conduct, which the City has withheld in its entirety, sets out specific "standards of conduct" that security officers are required to follow. It contains information under several headings, including: Conduct, Alertness, Attendance, Illness,

Scheduling, Confidentiality, Officer Conduct, Reporting for Duty, Professional Relationships, Safety, General Protocols, Security Posts, Honesty, Photo Identification Badges, and Pay Cheque or Payroll Questions.

In its representations, the City has provided scant evidence to explain how or why disclosing the specific information in this record could reasonably be expected to lead to the harms contemplated by sections 8(1)(e) or 13 of the *Act*. I have carefully reviewed this record, which is largely administrative in nature. For example, the section on safety deals with issues such as smoking on the job, which are unrelated to law enforcement or crime prevention. I am not persuaded, therefore, that disclosing the information in this record could reasonably be expected to endanger the life or physical safety of the City's security officers or any other person or seriously threaten the safety or health of an individual. Consequently, I find that the information in the Security Officer – Code of Conduct does not qualify for exemption under sections 8(1)(e) or 13 of the *Act*.

EXERCISE OF DISCRETION

The exemptions in sections 8(1) and 13 of the *Act* are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In this order, I have found that limited and specific portions of the Officer Safety Training Manual are exempt under sections 8(1)(c) and (e). I will, therefore, assess whether the City exercised its discretion properly in applying these exemptions to those specific portions of that record.

The Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

In its representations, the City lists the factors that it took into account in exercising its discretion under sections 8(1)(c) and (e) of the *Act*. It submits that it exercised its discretion in good faith and for a proper purpose. The appellant does not specifically address whether the City exercised its discretion properly in applying the section 8(1)(c) and (e) exemptions.

In my view, the City exercised its discretion based on proper considerations in applying the section 8(1)(c) and (e) exemptions to those portions of the Officer Safety Training Manual that I have found exempt under those provisions. It took relevant factors into account and did not consider irrelevant factors. I find, therefore, that its exercise of discretion was proper.

ORDER:

1. I order the City to disclose the Baton Policy and Procedure, the Handcuff Policy and Procedure, and the Security Officer – Code of Conduct, in their entirety, to the appellant.

2. I order the City to disclose the Officer Safety Training Manual to the appellant, except for those limited and specific portions that I have found are exempt under sections 8(1)(c) and (e) of the *Act*. I have provided the City with a copy of this record and highlighted in green those portions that are exempt and must not be disclosed to the appellant.

3. I order the City to disclose the records set out in order provisions 1 and 2 to the appellant by **December 29, 2008**

4. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the records that it discloses to the appellant.

Original signed by: November 25, 2008
Colin Bhattacharjee
Adjudicator