



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

ORDER MO-2508

Appeal MA09-251

Toronto Police Services Board



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/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

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 a specific occurrence report from a specified police Division. The Police located the responsive record and granted partial access to it. Access to portions of the record were denied pursuant to the discretionary exemptions in section 38(a), taken in conjunction with section 8(1)(l), and section 38(b), taken in conjunction with section 14(1) of the *Act*.

The requester, now the appellant, appealed the Police decision to deny access to the complete occurrence report.

During the mediation stage of the appeal, the Mediator confirmed with the appellant that she was seeking access to a complete copy of the occurrence report at issue. The Mediator also confirmed with the appellant that she was not seeking a correction of the information contained in the occurrence report that was disclosed to her. In addition, the Mediator clarified in the Mediator's Report that "if the appellant wishes to request corrections of any information in the police occurrence report, or attach a statement of disagreement to the report, she should contact the Police directly to pursue the matter further." In a letter dated January 14, 2010 addressed to the Mediator, the appellant confirmed that she is seeking access to all of "the deleted sections" of the requested record.

As further mediation was not possible, the file was transferred to the adjudication stage of the appeals process, where an Adjudicator conducts an inquiry under the *Act*. I sought and received the representations of the Police, initially. The Police indicated in their representations that they were no longer relying on sections 8(1)(l) and 38(b) to deny access to the undisclosed portions of the record. Rather, the Police stated that they were relying on the discretionary exemption in section 38(a), taken in conjunction with section 9(1)(d) (relations with other governments) to deny access only to those portions of the occurrence report which contained information obtained from the Canadian Police Information Centre (CPIC). As a result of this decision, which was communicated to the appellant in a decision letter dated February 24, 2010, portions of the occurrence report were disclosed to her. Because of the manner in which I address the application of this exemption to the records, it was not necessary for me to seek the representations of the appellant in this case.

RECORDS:

The information at issue consists of the undisclosed portions of the responsive occurrence report containing information received by the Police from CPIC.

DISCUSSION:

RELATIONS WITH OTHER GOVERNMENTS

The Police claim that the undisclosed portions of the occurrence report at issue refer to information they received from CPIC, which is operated by the Royal Canadian Mounted Police,

(the RCMP), an agency of the Government of Canada. They submit, therefore, that the undisclosed information is exempt from disclosure under section 9(1)(d), which reads:

A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c);

The Police indicate that certain information contained in the occurrence report was obtained through access to CPIC's database and that this information was supplied to them with an expectation that it would be treated confidentially. The Police state that the only information contained on the CPIC database "relating to the appellant was supplied to the [Police] by CPIC." They argue that the information in the CPIC database about the appellant was received in confidence from CPIC.

In order to deny access to a record under section 9(1), the Police must demonstrate that disclosure of the record could reasonably be expected to reveal information that the Police received from one of the government agencies or organizations listed in the section **and** that this information was received by the Police in confidence.

An expectation of confidentiality must have been reasonable, and must have an objective basis. In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case. It is not sufficient to simply assert an expectation of confidentiality with respect to the information received by the institution. [Order MO-1288]

In Order MO-1288, Adjudicator Holly Big Canoe addressed similar records, which were obtained by the Toronto Police from CPIC, though in that case the information held by CPIC originated with another Canadian police agency. She found that applying the principles set out above respecting the expectation of confidentiality on the part of the senior government agency:

The CPIC computer system provides a central repository into which the various police jurisdictions within Canada enter electronic representations of information they collect and maintain. Not all information in the CPIC data banks is personal information. That which is, however, deserves to be protected from abuse. Hence, a reasonable expectation of confidentiality exists between authorized users of CPIC that the personal information therein will be collected, maintained and distributed in compliance with the spirit of fair information handling practices. However, the expectation that this information will be treated confidentially on

this basis by a recipient is not reasonably held where a requester is seeking access to his own personal information.

There may be specific instances where the agency which made the entry on the CPIC system may seek to protect information found on CPIC from the data subject. Reasons for this might include protecting law enforcement activities from being jeopardized. These concerns will not be present in every case, and will largely depend on the type of information being requested. The Police have not identified any particular concerns in this area in the circumstances of this appeal, and it is hard to conceive of a situation where an agency inputting suspended driver or criminal record information would require the Police to maintain its confidentiality from the data subject. In fact, although members of the public are not authorized to access the CPIC system itself, the CPIC Reference Manual contemplates disclosure of criminal record information held therein to the data subject, persons acting on behalf of the data subject, and disclosure at the request or with the consent of the data subject.

Accordingly, I find that there is no reasonable expectation of confidentiality in the circumstances of this appeal, where the appellant is the requester and the information at issue relates to the suspension of the appellant's drivers licence and a history of his previous charges and convictions, the fact of which he must be aware.

Similarly, I find in the present case that there is no reasonable expectation of confidentiality in the information that is the subject of this appeal. In the appeal before me, as was the case in Order MO-1288, the appellant is the requester and in this case the information relates only to whether or not there are entries on CPIC related to her. I find that because there is not reasonable expectation of confidentiality in the only information in the record that remains undisclosed to the appellant, section 9(1)(d) has no application.

Having found that section 9(1)(d) does not apply, I find that the record is not exempt under section 38(a). As no other exemptions have been claimed for this information and no mandatory exemptions apply to it, I will order that a complete copy of the occurrence report that comprises the record at issue be disclosed to the appellant.

ORDER:

1. I order the Police to disclose a complete copy of the occurrence report that is the record at issue in this appeal to the appellant by **April 13, 2010**.

2. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the record which is disclosed to the appellant.

Original signed by: _____

Donald Hale
Adjudicator

_____ March 23, 2010