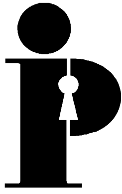

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1415

Appeal P_9700073

Ministry of the Attorney General

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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The requesters, reporters for a Toronto newspaper, sought access to information held by the Ministry's Special Investigations Branch, Crown Law Office - Criminal Division with respect to criminal charges laid against police officers employed by the Metropolitan Toronto Police Services Board (the Police). The Ministry located 64 documents, known as "Informations" or "I ndictments", in its Crown Law Office - Criminal Division which relate to criminal proceedings taken against Metropolitan Toronto police officers between 1990 and the date of the request. It also created a 38-page summary of the details, including the name of the offender and victim, the charges, the circumstances surrounding the offence and the disposition of the charges, all of which was contained in the documents.

Access to some of the information in each of these documents was granted to the requesters. However, access to the name of the police officer charged, the name of the victim, as well as any information which may identify either individual was withheld. The Ministry claimed the application of section 21(1) of the Act (invasion of privacy) to exempt this information from disclosure. The requesters, now the appellants, appealed the Ministry's decision, arguing that there exists a public interest in the disclosure of information relating to police wrong-doing.

During the mediation of the appeal, the appellants indicated that they no longer seek access to the 38-page summary prepared by the Ministry, but continue to seek access to the undisclosed portions of the documents.

A Notice of Inquiry was provided to the appellants, the Ministry and to the Metropolitan Toronto Police Association (the MTPA), in its capacity as a representative of its members, or former members. Submissions were received from all of the parties.

PRELIMINARY ISSUE:

ADEQUACY OF THE DECISION LETTER

The appellants submit that the Ministry has failed to provide them with adequate reasons for its refusal to fully disclose the records, and has thereby violated section 29(1)(b)(ii) of the Act. The appellants further submit that their ability to make proper submissions in this appeal and to properly evaluate whether or not to appeal the Ministry's decision was prejudiced by the failure of the Ministry to adequately describe its reasons for denying access to all of the records.

I note that in Orders M-913 and M-931, the appellants raised similar concerns regarding the decision letter provided to them by the Police. In those cases, both Inquiry Officer Anita Fineberg and I found that the decision letters to the appellants from the Police was inadequate in that the letters simply restated the sections of the Act which contained the exemptions the Police were relying on. However, both Inquiry Officer Fineberg and I found that no useful purpose would be served by requiring that the Police provide a new, more detailed decision letter.

In my view, the same holds true in the present situation. The decision letter provided by the Ministry does not explicitly state the reasons why access to the information was denied. It does, however, make reference to the sections of the Act which address the types of information that are considered to be "personal information" for the purposes of the Act. I also note that the appellants do not appear to have suffered any prejudice in their ability to evaluate whether to appeal the decision to deny access or to make adequate representations. As such, I find once again that no useful purpose would be served by ordering the Ministry to provide the appellants with another decision letter in this appeal. I urge the Ministry to more carefully comply with its obligations to requesters under section 29(1)(b) in the future.

NOTIFICATION OF AFFECTED PERSONS

The MTPA submits that both the Ministry and this office have violated certain provisions of the Act which relate to the notification of individuals whose rights may be affected by the disclosure of the information contained in the requested records. Specifically, it argues that the Ministry did not, as it is required to do by section 28 of the Act, notify the police officers and victims whose personal information is contained in the records that it intended to disclose some of the information contained in the records requested.

Similarly, it argues that the Commissioner's office is in breach of its obligations to the police officers and victims under section 50(3) of the Act, as it did not notify each of them individually upon receiving the notice of appeal which initiated the appeal process. It also submits that the Commissioner's office has violated section 52(13) of the Act by not giving the police officers and victims the opportunity to make representations at this, the inquiry stage, of the appeal. It further argues that, as a fraternal organization, it does not speak for its individual members, particularly with respect to matters relating to their individual privacy rights. In addition, some of these officers, and the majority of the victims, whose personal information appears in the records are not now, or have never been, members of the MTPA.

In my view, the MTPA has raised a number of valid points with respect to the issue of notification of affected persons in appeals involving large numbers of individuals. It should be noted, however, that each of the 64 records contains information relating to the officer(s) charged, the victim(s) involved in the offence and, in some cases, other identifiable individuals. The potential number of persons who could conceivably have an interest in the disclosure or non-disclosure of the records may number in the hundreds. Many of these records date back seven years and do not contain addresses which are current at this time, or contain no addresses at all.

For these reasons, this office decided it would be impractical to attempt to notify each of the potential affected persons. It was for this reason as well, that this office decided to notify the MTPA, in its capacity as a representative of many of the police officers who are named in the records.

Finally, in my view, for the reasons outlined below in my discussion of the application of the invasion of privacy exemption, notification to additional parties at this time is unnecessary. I will, accordingly, proceed with my inquiry in this matter.

DISCUSSION:

PERSONAL INFORMATION

All of the parties to the appeal, including the appellant, agree that the records at issue contain information which qualifies as "personal information" within the meaning of section 2(1) of the Act. I find that each of the records contain the personal information of the police officers, victims and other identifiable individuals. The names of the arresting officers, Crown Attorneys and Judges who are named in the records do not qualify as the "personal information" of these individuals as they are mentioned only in their professional, as opposed to their personal, capacities. Further, the records do not contain any personal information relating to the appellants.

INVASION OF PRIVACY

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

Section 21(3) Presumptions

The Ministry concedes in its submissions that the presumption in section 21(3)(b) of the Act does not apply to records which are created following the completion of a police investigation of criminal conduct, such as an Information or an Indictment. The MTPA submits, however, that the records contain information which falls within the presumptions in sections 21(3)(b) and (d) and, perhaps, sections 21(3)(a) and (h). These sections state:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
>
> (d) relates to employment or educational history;

> (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

I have reviewed the information contained in the records and find that they do not contain personal information which may properly fall within that described in sections 21(3)(a) or (h). In addition, I find that the information does not relate to the employment history of the individual officers within the meaning of section 21(3)(d). Rather, the records only describe discrete events which took place during the officer's employment with the Police.

Finally, I agree with the position taken by the Ministry with respect to section 21(3)(b). I find that because the records relate only to criminal proceedings in court which followed a police investigation, it cannot be said that they were compiled or are identifiable as part of the investigation into a possible violation of law. At the time the records were created, the investigation was completed. Accordingly, I find that none of the presumptions in section 21(3) apply in the circumstances of this appeal.

Section 21(2) Considerations

The Ministry submits that sections 21(2)(f) and (i), which favour the non-disclosure of the records, apply in the present case. It also, however, submits that the consideration listed in section 21(2)(a), as well as an unlisted factor identified by the Commissioner's office in previous orders, which favour the disclosure of this information, are applicable. The unlisted factor holds that the disclosure of the records could be desirable for ensuring public confidence in the integrity of the institution.

The MTPA also submits that the information contained in the records pertaining to the filing of criminal charges, as well as information about the conviction of some of these individuals, is "highly sensitive" within the meaning of section 21(2)(f).

The appellants also argue that the consideration favouring disclosure listed in section 21(2)(a) applies in the present appeal. Further, it argues that Informations, as court documents, are already readily accessible to the public at several Metropolitan Toronto court facilities and their disclosure will not, therefore, result in an unjustified invasion of personal privacy. In addition, they indicate that similar charge information against police officers is made publicly available by the Police Internal Affairs office or Police Complaint Bureau on a regular basis. They submit that the information has already been made public in this way and that they are simply seeking access to it where it has been compiled in one location.

The provisions of section 21(2) which are referred to above state:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances including whether,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

(f) the personal information is highly sensitive;

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

I have reviewed the submissions received from the parties and the records at issue in this appeal and have come to the following conclusions:

1. The consideration in section 21(2)(a) is not applicable in the circumstances of this appeal. In my view, the disclosure of the information which remains at issue would not further the purpose of subjecting the activities of the Ministry or of its agencies to public scrutiny. The portions of the records which have already been disclosed demonstrate the extent of the Ministry's efforts to protect the public from criminal conduct by police officers. In my view, the disclosure of the personal information of those police officers and victims is not desirable for the purpose of subjecting the activities of the Ministry to public scrutiny as contemplated by this section.

2. For similar reasons, I find that it cannot be said that the disclosure of the remaining information contained in the records could be desirable for ensuring public confidence in the integrity of the Ministry or its agencies. In my view, the disclosure of the remaining portions of the records containing only the personal information of the police officers and victims would not serve to ensure public confidence in the Ministry and its activities and agencies.

3. I find that the information contained in the records was, at the time the charges were laid, made available to the media, and thereby the public, through either the Police Public Complaints Bureau or its Internal Affairs office. In addition, each of the documents sought by the appellants is also publicly available in a Metropolitan Toronto-area court facility, though not compiled in the same way as the Police have done. I find that this is a significant factor weighing in favour of the disclosure of the requested information.

4. The information withheld from the records is highly sensitive within the meaning of section 21(2)(f). The records include information about criminal convictions of some of the individuals named therein. Previous orders of the Commissioner's office have held that information relating to an individual's criminal record may properly be described as "highly sensitive" within the meaning of section 21(2)(f) (Orders M-68 and M-222).

5. Similarly, many of the records contain information about police officers who were charged, but ultimately acquitted, of criminal offences. In my view, it is reasonable to expect that the disclosure of information which identifies these individuals by name may unfairly damage their reputations. As such, I find that the consideration listed in section 21(2)(i) applies to the personal information in the records at issue.

6. Balancing the considerations favouring the disclosure of the withheld information against the factors favouring the protection of the privacy of the police officers, victims and other individuals, I find the factors weighing in favour of privacy protection to be more

compelling. Accordingly, I find that the disclosure of the remaining personal information contained in the records would result in an unjustified invasion of the personal privacy of the police officers, victims and other individuals named in them. The information is, therefore, exempt under section 21(1) and should not be disclosed to the appellants.

ORDER:

I uphold the Ministry's decision.

Original signed by: June 25, 1997
Donald Hale
Inquiry Officer