
PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-030009-1

Toronto Police Services Board

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MEDIATOR: Leslie McIntyre

INSTITUTION: Toronto Police Services Board

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario received a complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) involving the Toronto Police Service (the Police).

The complaint relates to copies of two occurrence reports about the complainant that the complainant claims were improperly retained by a Police detective when that individual retired. This raises the issue of whether the Police had adequate measures in place to avoid unauthorized access to personal information in the occurrence reports.

In 1999, a business partner made an allegation about the complainant, which resulted in an investigation by the detective and subsequent criminal charges against the complainant. During his investigation, the detective obtained a copy of the two occurrence reports relating to the complainant from the Halton Police Service. These reports were faxed to the detective on September 21 and 22, 1999. The criminal trial was held on June 20, 2000, and the charges against the complainant were dismissed/withdrawn.

On June 27, 2001, the complainant filed a civil suit against the detective for false arrest, negligent investigation, malicious prosecution and alleged breaches of the *Canadian Charter of Rights and Freedoms*. The Toronto Police Service was not named in the suit. The detective retired from the Police on January 1, 2002.

The complainant indicated that two investigations were conducted into the detective's conduct in this matter. One was undertaken by the Ontario Civilian Commission on Police Services (OCCOPS) and the other by the Toronto Police Service. The latter resulted in a misconduct hearing in December 2001.

The hearing in connection with the complainant's civil suit commenced on March 25, 2002. The complainant states that prior to the start of these proceedings, the detective's lawyer indicated that she intended to introduce the two occurrence reports from the Halton Police Service into evidence; she provided a Schedule of Witnesses and Documents on which items 28 and 29, the last two items, were listed as Occurrence Reports from "H.R.P.S."

The complainant notes that the existence of these two occurrence reports had not been raised prior to March 2002: they had not been produced as part of disclosure in the civil trial, had not been raised at the criminal trial, and had not been raised during the investigations done by OCCOPS and the Police in connection with the detective's misconduct hearing.

The complainant believes that the detective retained a copy of these two occurrence reports when he retired on January 1, 2002, anticipating that he could use them in the pending civil suit.

DISCUSSION:

Is the information "personal information" as defined in section 2(1) of the Act?

The occurrence reports completed by the Police contain an individual's name, address, telephone number, sex, race and birthdate. In addition there is a description of the occurrence in question.

Section 2 (1) of the Act states, in part, that "personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the **race**, national or ethnic origin, colour, religion, **age**, **sex**, sexual orientation or marital or family status of the individual;
- (d) **the address, telephone number**, fingerprints or blood type of the individual;
- (h) **the individual's name if it appears with other information relating to the individual** or where the disclosure of the name would reveal other personal information about the individual;

Based on paragraphs (a), (d) and (h) of the definition of "personal information" in section 2 of the Act, I have concluded that the information at issue qualifies as the personal information of the complainant.

Was the "personal information" protected in accordance with Regulation 823, section 3(1)?

Regulation 823, section 3(1) states

Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

In response to this privacy complaint, the Police submitted a statement from their legal advisor quoting Rule 30 of the *Rules of Civil Procedure* concerning discovery of documents during civil actions. I asked the Police for further detail. In their response, the Police indicated that:

[t]he civil action was commenced against [the detective] personally. However, by virtue of section 50 of the *Police Services Act*, the Police Services Board is vicariously liable for any civil wrongs committed by its members in the course of

their duties. Whether a plaintiff chooses to sue the member by name or simply sue the police service itself, the defence is conducted on behalf of the institution.

...

The primary allegation in a claim for negligent investigation is that the police officer conducted an improper or insufficient investigation and did not have sufficient grounds to both lay and maintain the charge. In order to defend against such a claim, all material gathered by the police officer in the course of his investigation and all factors considered by him when laying and maintaining the charge must be considered. The court's role is to review the material and the factors and determine whether the detective in fact had enough information upon which to lay a criminal charge. It is therefore essential for the lawyer defending the Board and a police officer in a civil action to review all of that evidence in order to be in a position to be able to properly defend the action. This of course includes a review of all documents in the police file regarding the investigation.

The [complainant's] family commenced a civil action against [the detective] for various causes of action, including negligent investigation. The focus of their claim was that [the detective] had failed to conduct a proper investigation of the allegations made against [the complainant] and that he did not have reasonable grounds to lay and maintain the charge. In order to defend this action, all material in the possession of the Toronto Police Service in relation to the investigation was provided to [a named solicitor], Litigation, Toronto City Hall. This file contained, among other things, the statements provided to [the detective] by the complainants, some hand-written notes he had made himself and the two occurrence reports that he had obtained from Halton Regional Police Service. All of the documents in the file were gathered in the course of his investigation into the allegations of criminal activity that had been made against [the complainant].

The Police note further that:

On a point of clarification, [the detective's lawyer] reviewed her notes with respect to a telephone conversation she had on March 18, 2002 with [a crown attorney]. [The crown attorney] had attended at the pre-trial for the criminal charges against [the complainant] along with [the complainant's lawyer]. [The crown attorney] advised [the detective's lawyer] that he and [the complainant's lawyer] discussed the prior occurrence...and [the complainant's lawyer] indicated that charges had not been laid. This suggests that [the detective] had provided [the crown attorney] with the information about the previous occurrence report(s), if not the reports themselves, and [the crown attorney] in turn shared this information with [the complainant's lawyer]...

The Police confirmed that the detective retired from the Service on January 1, 2002. They also confirmed that the legal work on the defence of the detective in the civil suit began in August, 2001.

The Police confirmed that the lawyer handling his case “took carriage of this file from another lawyer in the City of Toronto Legal Services Division on or around February 19, 2002. She first spoke with [the detective] on February 20, 2002 and first met with him personally on March 11, 2002.”

When asked “How did you obtain the copies of the Halton Regional Police Service occurrence reports to include as part of your client’s [the detective’s] file?” this lawyer confirmed the following in an e-mail:

As part of my preparation for trial, I requested that [the detective] provide me with any documents that he had relating to this case. The Occurrence Reports were provided to me by [the detective]. They were part of his file.

The information provided by the detective’s lawyer indicates that the detective had a copy of the two occurrence reports in his possession in early March 2002, subsequent to his retirement from the Police, and he gave the occurrence reports to the lawyer himself, from his own files, as opposed to her obtaining them from the Police. In my view, these reports ought to have remained in the custody and/or control of the Police. There is no authority in the *Act* that would permit the detective to remove and retain copies of police records containing the personal information of others for his own personal use after his retirement.

During my investigation, I spoke to the Police about whether or not they had a policy in place to address Regulation 823, section 3(1). In response, the Police provided me with a copy of their policy relating to information security and the rules relating to the removal of files. On reviewing these materials, I am satisfied that they adequately address the protection of records containing personal information.

However, although the Police have adequate measures in place, in this instance, they were not followed and I will address this in the recommendation section below.

CONCLUSION:

I have reached the following conclusions based on the results of my investigation:

1. The information about the complainant contained in the occurrence reports is “personal information” as defined in section 2 (1) of the *Act*.
2. The Police have adequate measures in place to address the protection of records containing personal information.

RECOMMENDATION:

1. The Police should remind staff of the specific policies and rules which relate to the security and removal of information in the Police Service files, and of their obligation to comply with these policies and rules.
2. The Police should make the necessary efforts to recover copies of the occurrence reports and any other records the detective may have retained about the complainant from him.

By **June 23, 2004**, the institution should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Leslie McIntyre
Mediator

March 23, 2004