



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

ORDER M-75

Appeals M-910167 and M-910217

Metropolitan Toronto Police Services Board



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ORDER

BACKGROUND:

The Metropolitan Toronto Police Services Board (the Police) received a request for access to "such information to which I might be entitled" under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester supplied his name, date and place of birth, social insurance number, and the name of a company he owned. The same requester submitted a second request to the Public Complaints Commissioner (the PCC) for access to any information relating to a complaint he had filed with that organization. The second request was transferred by the PCC to the Police, pursuant to section 18(3) of the Act.

In response to the first request, the Police identified 212 pages of records, and in response to the second, 107 pages of records. The original request became the subject of Appeal M-910167, and the second request became the subject of Appeal M-910217. All pages of the record relating to Appeal M-910217 are also included in Appeal M-910167, with the exception of page 105. With the agreement of the Police and the appellant, the two appeals have been combined for the purpose of this order, and I will be referring to the page numbering used in Appeal M-910167.

A total of 113 pages were released to the requester in their entirety, and access to the remaining pages was denied, in whole or in part, pursuant to various provisions of section 8, and sections 14(1) and 38(b) of the Act. A list of the pages released to the requester is attached as an appendix to this order. The requester appealed both decisions.

Further mediation was not successful, and notice that an inquiry was being conducted to review the decisions of the Police was sent to the Police, the appellant, and four individuals whose personal information might be contained in the remaining pages of the record (the affected persons). Representations were received from the Police only.

PRELIMINARY ISSUES:

Duplicate pages

There are 14 duplicate pages of the record. Although some duplicates have additional markings on them, none of the markings are relevant to the issues in these appeals. The pages and their duplicates are: 12 (63), 13 (64), 15 (65), 22 (85, 199), 26 (71), 27 (70), 28 (72), 33 (73), 38 (41, 74, 203), 39 (56), 40 (57), 66-68 (190-192). I will not refer to the duplicates in my discussion, but my order with respect to these pages will apply to their duplicates.

Records not responsive

The Police claim that pages 10, 55, 75-77, 105 (from Appeal M-910217), 113, 125, 157-159, 164-167, 169-173, 175, 176, 178-187, 189 and 204-212 are not responsive to the appellants requests, and fall outside the scope of these appeals. I have reviewed these pages, and agree that all of them, with the exception of pages 10, 75, 76, 105 (from Appeal M-910217), 113, 179 and

189, are not responsive to the requests and fall outside the scope of the appeal. However, I find that pages 10, 75, 76, 105 (from Appeal M-910217), 113, part of page 179, and page 189 contain information which is responsive to the requests.

Records disclosed to the appellant

Page 113, is a copy of a regulation which, in my view, is responsive to the requests. No exemptions were claimed by the Police with respect to this page, so it should be released to the appellant in its entirety.

In their representations, the Police withdraw all exemption claims relating to page 53. Therefore, this page should be released to the appellant.

Pages 137-148 consist of two interim reports and one final report headed: "Form 4 - Metropolitan Toronto Police Force Complaints Act, 1984". These pages contain a number of indicators which suggest that the reports have already been released to the appellant, including a notation on the bottom of the final report that includes the appellant on the distribution list for the report. It would appear that these reports are the type of documents that must be sent to a complainant by the PCC under section 87 of the Police Services Act. The Police claim section 8(2)(a) as the basis for exempting these pages. However, these pages clearly contain the personal information of the appellant, and the Police have not raised the discretionary exemption provided by section 38(a) to exempt personal information of the appellant. Therefore, in the circumstances of this appeal, I find that pages 137-148 do not qualify for exemption and should be disclosed to the appellant in their entirety.

Similarly, pages 53A and 54 are copies of a letter sent by the PCC to the appellant. Although the Police have claimed section 8(2)(a) as the basis for exempting certain portions of these pages, for the reasons outlined above with respect to pages 137-148, I find that the severances on pages 53A and 54 do not qualify for exemption and these pages should be released to the appellant in their entirety.

Therefore, the pages of the record which remain at issue in these appeals are: 10, 12-15, 22, 26-28, 33, 38-40, 44, 44A, 45, 51, 66-68, 75-76, 78, 98, 105 (from Appeal M-910217), 123, 126, 131-133, 148, 154 (appended note only), 156, part of page 179, 188 and 189. These pages consist of notes, letters, a computer printout, "reports", forms, excerpts from police officers' notebooks, and an Officer Complaint Summary, all of which relate to a complaint made by the appellant to the Police regarding a threatening telephone message received by the appellant and damage to his property, and a subsequent complaint made by the appellant to the PCC about the conduct of the police officer in charge of the investigation.

The issues arising in these appeals are:

- A. Whether any of the information contained in the remaining pages of the record qualifies as "personal information", as defined in section 2(1) of the Act.

- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.
- C. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(a) applies.

ISSUE A: Whether any of the information contained in the remaining pages of the record qualifies as "personal information", as defined in section 2(1) of the Act.

Section 2(1) of the Act defines "personal information", in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
...
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
...
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have examined the remaining pages of the record, and, in my view, all pages contain personal information of either the appellant, one or more of the affected persons, or both the appellant and one or more of the affected persons. I find that one sentence on page 179, which the Police claim contains the personal information of someone other than the appellant, does not.

I find that pages 10, 12-15, 22, 26-28, 33, 38-40, 44, 44A, 51, 66-68, 75-76, 78, 98, 105 (from Appeal M-910217), 131-133, 154 (appended note only), 188 and 189 contain personal information of both the appellant and one or more of the affected persons; and that pages 45, 123, 126, 148, 156, and the remaining part of page 179 contain the personal information of the appellant only. Because the Police have not claimed any of the provisions of section 8 as the basis for exempting the part of page 179 which I have found to be responsive to the request should be released to the appellant.

ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.

Under Issue A, I found that pages 10, 12-15, 22, 26-28, 33, 38-40, 44, 44A, 51, 66-68, 75-76, 78, 98, 105 (from Appeal M-910217), 131-133, 154 (appended note only), 188 and 189 contain personal information of both the appellant and affected persons.

Section 36(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of an institution. However, this right of access is not absolute; section 38 provides a number of exceptions to this general right of access, including section 38(b) which states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

The section introduces a balancing principle. The Police must look at the information and weigh the appellant's right of access to his personal information against the affected persons' right to the protection of their personal privacy. If the Police determine that release of the information would constitute an unjustified invasion of the affected persons' personal privacy, then section 38(b) gives the Police the discretion to deny the appellant access to his personal information.

Sections 14(2) and 14(3) of the Act provide guidance in determining whether the disclosure of the personal information contained in the record would constitute an unjustified invasion of personal privacy.

The Police claim that sections 14(3)(a) and (b) of the Act are relevant considerations. These sections read as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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;

Having reviewed the relevant pages, in my view, all pages, with the exception of pages 22, 78 and 98, were "compiled and are identifiable as part of an investigation into a possible violation of law", namely the appellant's original complaint about a threatening message and property damage. Accordingly, I find that the presumption contained in section 14(3)(b) of the Act applies to pages 10, 12-15, 26-28, 33, 38-40, 44, 44A, 51, 66-68, 75, 76, 105 (from Appeal M-910217), 131-133, 154 (appended note only), 188 and 189.

Page 22 is a letter written by an individual in his professional capacity, and consists primarily of personal information of individuals other than the appellant. The Police claim that section 14(3)(a) applies to this page. On page 20 of the record, which is a memo written by the appellant to the Police and was released to the appellant, he states that "[a] copy of a letter written by [the author of page 22] is attached", which would appear to indicate that page 22 was supplied to the Police by the appellant. However, in the absence of any representations from the appellant to confirm this fact, I find that the presumption contained in section 14(3)(a) does apply.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy have been satisfied, I must then consider whether any other provisions of the Act rebut this presumption.

In my view, these pages do not contain any information relevant to section 14(4). I am also of the opinion that no combination of factors listed in section 14(2) would operate to rebut the presumptions as they apply to pages 10, 12-15, 22, 26-28, 33, 38-40, 44, 44A, 51, 66-68, 75, 76, 105 (from Appeal M-910217), 131-133, 154 (appended note only), 188 and 189.

One of the affected person has consented to the disclosure of her personal information. Pages 10, 78 and 98 contain the personal information of this affected person only, while pages 27 and 38 contain the personal information of this person and other affected persons. Because none of the provisions of section 8 have been claimed by the Police as the basis for exempting pages 10, 78 and 98, these pages should be released to the appellant in their entirety.

Section 38(b) is a discretionary exemption, giving the Police the discretion to refuse to disclose personal information to the appellant where disclosure would constitute an unjustified invasion of another person's privacy. I have reviewed the Police's representations regarding their decision

to exercise discretion in favour of claiming section 38(b), and find nothing improper in the circumstances of these appeals.

ISSUE C: If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(a) applies.

Under Issue A, I found that pages 45, 123, 126, 148 and 156 contain the personal information of the appellant only. The institution claims that these pages qualify for exemption under section 8(2)(a) of the Act.

Section 38(a) provides exception to the general right of access to personal information by the person to whom the information relates. It reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; (emphasis added)

These pages of the record can be described as follows:

- 45 Notice of Intention to Conduct a Review, June 15, 1989
- 123 Request for Reclassification, February 27, 1989
- 126 Notes entitled "First Interim"
- 148 Duplicate of 123 with addition of handwritten note
- 156 Letter, November 29, 1990

Section 8(2)(a) reads as follows:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

In order to qualify for exemption under section 8(2)(a) of the Act, a record must satisfy each part of the following three-part test:

1. the record must be a report; **and**

2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Order M-12, M-52]

The word "report" is not defined in the Act. However, in my view, in order to qualify as a "report", the record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact [Order M-12, M-52].

Having reviewed the relevant pages, I find that they are not "reports". In my view, the information contained on these pages is properly described as observations or recordings of fact, rather than formal statements or accounts of the results of the collation and consideration of information. Therefore, section 8(2)(a) does not apply to pages 45, 123, 126, 148 and 156, and the exemption provided by section 38(a) of the Act is not available.

ORDER:

1. I uphold the Police's decision to deny access to the remaining parts of the following pages and their corresponding duplicates: 12-15, 22, 26, 28, 33, 39-40, 44, 44A, 51, 66-68, 75, 76, 105 (from Appeal M-910217), 131-133, 154 (appended note only), 188 and 189.
2. I order the Police to disclose pages 10, 45, 53, 53A, 54, 78, 98, 113, 123, 126, 137-148 and 156 to the appellant.
3. I order the Police to disclose the portions of the pages 27, 38 and 179 which are **not** highlighted in the copy of the record which is being forwarded to the institution with this order.
4. In order to verify compliance with the provisions of this order, I order the Police to provide me with a copy of the pages which are disclosed to the appellant pursuant to provisions 2 and 3 of this order, **only** upon request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

December 29, 1992

APPENDIX

Pages released in entirety to the appellant (113):

1-9, 11, 16-21, 23-25, 29-32, 34-37, 42, 43, 46-50, 52, 58-62, 69, 78A, 79-84, 86-97, 99-112, 114-122, 124, 127-130, 134-136, 149-153, 155, 160-163, 168, 174, 177, 193-198, 200-202.