



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-329**

**Appeal M-9300434**

**Metropolitan Toronto Police Services Board**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Metropolitan 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 20 different items. Four of the items form the subject of this appeal. They are: information relating to an alleged computer system transmission failure on June 18, 1993 (Item 7); an inventory of all computer equipment and facsimile machines owned or leased by the force and their depreciation schedules (Item 8); a listing of names and Internet addresses for systems identified by the requester, including the names of every machine, all user names and full UUCP addresses (Item 11); and a listing of frequencies used by the Police for data transmission, speed of modems, stop bit and parity, and all information relating to the use of computer services available in police vehicles (Item 15).

The Police responded by refusing to confirm or deny the existence of any record responsive to Item 7 pursuant to section 8(3) of the Act. The Police further denied access to the information relating to Items 8, 11 and 15 under section 8(1) of the Act. The requester appealed these decisions to the Commissioner's office.

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the Police was sent to the appellant and the Police. Representations were received from the Police only.

In their representations, the Police indicate that, if records of the nature requested in Item 7 exist, they would qualify for exemption under section 8(1) of the Act.

## ISSUES:

The issues arising in this appeal are as follows:

- A. Whether records of the nature requested in Item 7, if they exist, would qualify for exemption under section 8(1) of the Act.
- B. Whether section 8(3) of the Act applies to the information requested in Item 7 in the circumstances of this appeal.
- C. Whether the discretionary exemptions found in sections 8(1)(a), (i) and (l) of the Act apply to records relating to Items 8, 11 and 15.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether records of the nature requested in Item 7, if they exist, would qualify for exemption under section 8(1) of the Act.**

The Police submit that, if records of the nature requested in Item 7 exist, they would qualify for exemption under sections 8(1)(a), (i) and (l) of the Act. These sections provide that:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (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 purpose of the exemptions contained in section 8(1) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to lead to one of the harms set out in this section. The Police bear the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm(s) and, in my view, the Police discharge this onus by establishing a clear and direct linkage between the disclosure of the specific information and the harm alleged (Orders P-534 and P-542).

The Police submit that disclosure of records of the nature requested in Item 7, if they exist, would provide information which could reasonably be expected to interfere with, or cause the interruption of, communications within the Police service. The Police further state that the release of records of this type could facilitate unauthorized access into these systems and could be used by knowledgeable individuals to facilitate the commission of an unlawful act or hamper the ability of the Police to control crime. The Police's representations then provide detailed evidence as to how the disclosure of such records would lead to the harms set out in sections 8(1)(i) and (l).

Having reviewed the representations of the Police, I am satisfied that disclosure of records of the type requested, if they exist, could reasonably be expected to endanger the security of a system established for the protection of items for which protection is reasonably required (section 8(1)(i)), and could also reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime (section 8(1)(l)). Accordingly, I find that records of the type requested in Item 7, if they exist, would qualify for exemption under both sections 8(1)(i) and (l) of the Act.

Because of the manner in which I have dealt with this issue, it is not necessary for me to consider the potential applicability of section 8(1)(a) to records of this type.

**ISSUE B: Whether section 8(3) of the Act applies to the information requested in Item 7 in the circumstances of this appeal.**

In their representations, the Police state that they are relying on section 8(3) of the Act to refuse to confirm or deny the existence of records responsive to Item 7 of the appellant's request.

Section 8(3) of the Act provides:

A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

A requester in a section 8(3) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 8(3), the Police are denying the requester the right to know whether a record exists, even when one does not. This section provides the Police with a significant discretionary power which I feel should be exercised only in rare cases.

In Order P-542, former Inquiry Officer Asfaw Seife made the following statements about section 14(3) of the Freedom of Information and Protection of Privacy Act, which is the equivalent of section 8(3) of the Act:

An institution relying on section 14(3) of the Act must do more than merely indicate that records of the nature requested, if they exist, would qualify for exemption under sections 14(1) or (2). The institution must establish that disclosure of the mere existence or non existence of such a record would communicate to the requester information that would fall under either section 14(1) or (2) of the Act.

I agree with this statement and adopt it for the purposes of this appeal.

In my discussion of Issue A, I found that records of the type which would be responsive to Item 7, if they exist, would qualify for exemption under section 8(1)(i) and (l) of the Act.

Having carefully reviewed the representations of the Police, and all of the circumstances of the appeal, I am satisfied that confirmation of the existence or non-existence of records responsive to Item 7 of the request would communicate to the appellant information which would fall under section 8(1)(i) or (l) of the Act.

I find, therefore, that in the circumstances of this appeal, section 8(3) of the Act is applicable to the information requested in Item 7. I have reviewed the submissions of the Police regarding their exercise of discretion to refuse to confirm or deny the existence of a record responsive to Item 7, and I find nothing improper in this decision.

**ISSUE C:     Whether the discretionary exemptions found in sections 8(1)(a), (i) and (l) of the Act apply to records relating to Items 8, 11 and 15.**

**Items 8 and 11**

In their decision letter, the Police claimed that section 8(1)(l) applied to records which would be responsive to Item 8 of the request (inventory of computer and facsimile equipment, and depreciation schedules), and that sections 8(1)(a), (i) and (l) apply to Item 11 (Internet names and addresses).

In their representations, however, the Police have clarified that they do not have an actual inventory of computer equipment or facsimile machines nor a depreciation schedule for such equipment. They further indicate that since they do not rent equipment, they would not have any lease agreements.

The Police also state that the network systems identified by the appellant in Item 11 are not known by the Police. They now indicate that no records exist regarding these systems.

In my view, given the specific wording of the request relating to Items 8 and 11, the Police should have originally responded to the appellant that records responsive to these aspects of his request do not exist. I have reviewed the submissions of the Police with respect to the steps taken to search for records responsive to Items 8 and 11. I am satisfied that the Police have taken all reasonable steps to locate records which would be responsive to this request.

**Item 15**

The Police submit that sections 8(1)(a), (i) and (l) apply to the information sought under Item 15 of the request (radio frequencies and computer services).

The Police indicate that information transmitted between base and mobile units forms the primary source of communication among police officers and is fundamental to the performance of the Police function. The Police indicate further that communications contain, for example, personal information, information relating to police investigations and responses to calls for service.

The Police submit that information relating to frequencies and technical specifications for computer equipment would permit an individual to intercept or transmit directly to the Police systems. The Police's representations provide detailed evidence as to how disclosure of this information would interfere with calls

for service and discussions between officers in the performance of their duty, such as the exchange of intelligence information.

In reviewing the circumstances of this appeal, I am satisfied that sufficient evidence has been provided to demonstrate a direct linkage between the disclosure of the information contained in the records and the harm alleged in section 8(1)(l). I find, therefore, that the release of the information contained in the records relating to Item 15 could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

Section 8(1)(l) is a discretionary exemption. I have reviewed the Police's representations, and I find nothing to indicate that the exercise of discretion was improper in the circumstances of this appeal.

Because of the manner in which I have dealt with this issue, it is not necessary for me to consider sections 8(1)(a) or (i).

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ June 7, 1994