



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

ORDER M-519

Appeal M-9500074

Sarnia 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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act, (the Act). The Sarnia Police Services Board (the Police) received a request for access to a listing of bills paid for all cellular telephones used by the Police for the month of September 1994. The Police located records responsive to the request and granted access to all of the information contained therein, with the exception of the following information:

- numbers called on the cellular telephones,
- the phone number of the cellular telephones (with one exception),
- the account number with the cellular telephone service provider,
- the internal accounting number used by the Police which refers to the account, and
- the name of the individual authorized to receive the phone bills.

The Police relied on the following exemption contained in the Act to deny access to the undisclosed information:

- law enforcement - sections 8(1)(b), (c), (d) and (g).

The requester appealed the decision to deny access to this information. During the course of the mediation of the appeal, the appellant agreed that he would not seek access to the called numbers which appear on the records. A Notice of Inquiry was forwarded to the Police and the appellant. Representations were received from the Police only.

DISCUSSION:

LAW ENFORCEMENT

The Police claim the application of sections 8(1)(b), (c), (d) and (g) of the Act to the undisclosed information contained in the records. These sections state:

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

- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use of likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in

respect of a law enforcement matter, or disclose information furnished only by the confidential source;

- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

Section 8(1)(b)

The purpose of section 8(1)(b) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure would interfere with an **ongoing** law enforcement matter or investigation.

The Police submit that the use of the cellular telephones by its staff is limited to law enforcement matters as defined in section 2(1). Accordingly, it argues that it has a duty not to release information regarding the use of the cellular telephones as the disclosure of this information would "interfere with an investigation undertaken with a view to a law enforcement proceeding ...". However, I have not been provided with any evidence of potential interference which may occur in relation to an investigation or matter which is ongoing. Further, I find that the information relates only to the administrative arrangements made by the Police for the rental of cellular telephones and not to any specific law enforcement efforts.

Accordingly, I find that the exemption provided by section 8(1)(b) has no application to the undisclosed information contained in the records at issue in this appeal.

Section 8(1)(c)

In Order 170, then-Inquiry Officer John D. McCamus considered the interpretation of section 14(1)(c) of the provincial Freedom of Information and Protection of Privacy Act, which section is equivalent to section 8(1)(c) of the municipal Act. Inquiry Officer McCamus stated:

In order to constitute an "**investigative technique or procedure**" in the requisite sense, it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that the particular technique or procedure is generally known to the public would normally lead to the conclusion that such compromise would not be effected by disclosure and accordingly that the technique or procedure in question is not within the scope of the protection afforded by section 14(1)(c).

I adopt Inquiry Officer McCamus' interpretation of section 14(1)(c) for the purposes of section 8(1)(c) and this appeal.

The investigative technique or procedure, in this case, is not one which is particular to law enforcement and is not unknown to the public. The disclosure of the fact that a Police Service makes use of cellular telephones would not hinder or compromise its effective use. Accordingly, the undisclosed information contained in the records does not qualify for exemption under section 8(1)(c).

Section 8(1)(d)

In Order 139, former Commissioner Sidney B. Linden determined, in the context of section 14(1)(d) of the provincial Act, that an institution claiming that the disclosure of a record would reveal the identity of a confidential source must provide evidence of the circumstances in which the information was given in order to establish confidentiality. The same holds true when, as in this appeal, the Police rely on section 8(1)(d) of the Act to deny access to a record.

The Police have not addressed how the disclosure of the information contained in the records might be considered to have been provided with an expectation of confidentiality. I find, therefore, that section 8(1)(d) has no application to the information at issue in this appeal.

Section 8(1)(g)

In order for a record to qualify for exemption under section 8(1)(g) of the Act, the Police must establish that disclosure of the record could reasonably be expected to:

- (a) interfere with the gathering of law enforcement intelligence information respecting organizations or persons, **or**
- (b) reveal law enforcement intelligence information respecting organizations or persons.

The term "intelligence" is not defined in the Act. The Concise Oxford Dictionary, eighth edition, defines "intelligence" as "the collection of information, [especially] of military or political value", and "intelligence department" as "a [usually] government department engaged in collecting [especially] secret information".

For the purposes of section 8(1)(g) of the Act, "intelligence" information may be described as information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violation of law, and is distinct from information which is compiled and identifiable as part of the investigation of a specific occurrence.

The information contained in the records at issue is not information gathered by the Police with respect to ongoing efforts to generally prevent crime. Rather, it represents information of an administrative nature regarding the supply of certain equipment to the Police. I find, accordingly, that this information is not exempt from disclosure under section 8(1)(g).

As none of the exemptions claimed have been found to apply to the undisclosed information contained in the records, they should be disclosed to the appellant.

ORDER:

1. I order the Police to disclose to the appellant within twenty-one (21) days of the date of this order the undisclosed phone numbers of the cellular telephones, the account number with the cellular mobile telephone service provider, its internal accounting number and the name of the individual authorized to receive the phone bills.
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 records disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ May 4, 1995