



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

# **ORDER M-510**

**Appeal M-9400416**

**Sault Ste. Marie Police Services Board**



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## **NATURE OF THE APPEAL:**

On November 16, 1994, Inquiry Officer Donald Hale issued Order M-421, which addressed a decision made by the Sault Ste. Marie Police Services Board (the Police) to deny access to a one-page printout identifying the duty officer and dispatchers who were on duty at the police station at a specified time. The Police withheld access to this information pursuant to the personal privacy exemption found in section 14 of the Act.

Inquiry Officer Hale made the following statements with respect to this information:

I find that the names of the individual employees contained in Record 85 cannot be characterized as information relating to their employment history within the meaning of the Act. Accordingly, the names of the four individual employees of the Police alone, as they appear in this record, do not qualify as their "personal information" within the meaning of the Act.

Inquiry Officer Hale concluded that section 14 of the Municipal Freedom of Information and Protection of Privacy Act (the Act) could not apply, and ordered that the names of the dispatchers and duty officer found on Record 85 be disclosed to the appellant.

In correspondence sent on behalf of the dispatchers, this office was asked to reconsider Order M-421 as the dispatchers and duty officer had not been provided with the opportunity to make representations regarding disclosure of the record which contained their names.

The request for reconsideration was granted, and a new Notice of Inquiry which summarized both the issues raised by the original appeal and the reconsideration was sent to the Police, the requester, the dispatchers and the duty officer. Representations were received from the Police, the requester and the dispatchers.

## **PRELIMINARY ISSUES:**

### **ALTERNATIVE ACCESS**

Both the Police and the dispatchers submit that the request may be related to the requester's defence of an offence under the Highway Traffic Act with which he was charged. If such is the case, the dispatchers and the Police submit that the court is the appropriate forum to hear the request and to determine if the information should be disclosed.

In my view, the fact that information which is the subject of a request under the Act may also be at issue in another proceeding does not prevent a request from being made under the Act. Former Commissioner Sidney B. Linden reached a similar conclusion in Orders 48 and 53. In Order 48, he stated:

[I]n my view, the existence of codified rules which govern the production of documents in other contexts does not necessarily imply that a different method of obtaining documents under the Freedom of Information and Protection of Privacy Act, 1987 is unfair.

In my opinion, had the legislators intended that the Act not apply to records held by government institutions whenever circumstances such as those described by the Police and the dispatchers existed, they could have done so through the use of specific wording to that effect. I find no such wording in the Act and the Police and the dispatchers have not drawn my attention to any section of the Act which might be interpreted in such a manner. In my view, the Act can and should operate as an independent piece of legislation (Order P-689).

## **DISCRETIONARY EXEMPTIONS**

In an earlier request for reconsideration, the dispatchers submitted that the discretionary exemptions found in sections 8(1)(c), (d) and (e) and section 13 apply. Accordingly, the issue of whether an affected person can rely on the application of discretionary exemptions which the Police have not claimed were included in the Notice of Inquiry.

There is no mention of this issue in the representations provided on the dispatchers' behalf and, aside from an expressed concern for the personal safety of the dispatchers, the individual exemptions are not addressed. In its representations, the Police indicate that it considered and rejected the application of discretionary exemptions in sections 8 and 13 of the Act to the information at issue.

As a general rule, the responsibility rests with the head of an institution to determine which, if any, discretionary exemptions should apply to a particular record. The Commissioner's office, however, has an inherent obligation to uphold the integrity of Ontario's access and privacy scheme. In discharging this responsibility, there may be rare occasions when the Commissioner or his delegate decides that it is necessary to consider the application of a discretionary exemption not originally raised by an institution during the course of an appeal.

In my view, this appeal does not represent the kind of situation where a discretionary exemption not originally raised by the Police should be considered. The scheme of the Act clearly contemplates that sections 14 and 38(b) are designed to protect the interests of persons whose personal information may be contained in records.

## **COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION**

During this appeal, a concern arose about whether the collection, use and disclosure of particular personal information was authorized by the relevant provisions in Part III of the Act.

In these circumstances, I believe that the interests of all the parties would be best served by having this concern investigated more fully by the Compliance Branch of the Commissioner's office. Accordingly, I have referred this matter to the Compliance Branch of this office to conduct an independent investigation into the circumstances of the collection, use and disclosure of the personal information.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

The dispatchers submit that the names of the individuals found in the record constitute personal information. Personal information is defined in section 2(1) of the Act, in part, as recorded information about an identifiable individual.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Assuming, for the purposes of this order, that the record does contain the personal information of the dispatchers and the duty officer, in my view, the only exception to the section 14(1) mandatory exemption which would have potential application in the circumstances of this appeal is section 14(1)(f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. None of the parties have raised the application of section 14(3) of the Act.

If none of the presumptions contained in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the request.

The dispatchers submit that the following factor favours non-disclosure of the personal information:

- the individuals to whom the personal information relates will be exposed unfairly to pecuniary or other harm - section 14(2)(e)

The Police submit that the dispatchers never indicated a specific incident which would directly link them to the appellant in a way which would cause concern or fear, and the Police did not find any indication of the appellant having been previously involved with any of the dispatchers named in the record. The Police submit that "a person must be accountable in their professional capacity".

The appellant submits that he was falsely charged, and his representations suggest that disclosure of the information is necessary to ensure a fair determination of his rights (section 14(2)(d)). He submits that all he

is requesting is the name of the officer he spoke to on the telephone and the names of the dispatchers who the officer spoke to during their telephone conversation.

In the context of the appellant's request, disclosure of the record would reveal the name of the individuals and the fact that they were on duty between the hours of 2:30 and 3:30 am on a particular date almost 17 months ago. The appellant is not requesting the sign in time or sign out time of each individual, what the assigned work hours were, whether the individual was on a regularly assigned shift, was covering for someone else, or was working overtime.

Having carefully reviewed the information at issue and the representations provided to me, and having considered all of the circumstances of this appeal, I make the following findings:

- (1) I find that section 14(3) does not apply to the information in the record.
- (2) I find that the personal safety of the individuals named in the record is a relevant consideration.
- (3) I am not satisfied that the duty officer and the dispatchers **will** be exposed unfairly to pecuniary or other harm if their names are disclosed to the appellant (section 14(2)(e)).
- (4) I find that there is a general interest of the public in being able to know who they are in contact with in the public service.
- (5) I find that the fact that the appellant is requesting the information in order to pursue the defence of an offence with which he was charged is a relevant consideration.

Having balanced all of the relevant considerations in this appeal, I am of the view that disclosure of the names of the duty officer and dispatchers would not constitute an unjustified invasion of their personal privacy, and the information should be disclosed to the appellant.

**ORDER:**

1. I order the Police to disclose the names of the duty officer and dispatchers contained in Record 85 within thirty-five (35) days of the date of this order, but not earlier than the thirtieth (30th) day following the date of this order.
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 record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Holly Big Canoe

\_\_\_\_\_ April 21, 1995

Inquiry Officer