



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

## **ORDER M-656**

Appeals M\_9500385 and M\_9500386

Thunder Bay Police Services Board



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## NATURE OF THE APPEAL:

The Thunder Bay Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records concerning an investigation into the disappearance of handguns purchased by the Kenora Police Department. The requester, who is a journalist, was advised by the Police that the investigation was completed and that no charges would be laid. The guns were recovered by the Police.

The Police identified 35 pages of responsive records, including an occurrence report, supplementary reports, property reports, a search warrant and its supporting documentation. Following consultations with a number of individuals identified in the various records, the Police disclosed 13 pages of records in their entirety and denied access to the remaining pages, in whole or in part, on the basis of one or more of the following exemptions found in the Act:

- law enforcement - sections 8(1)(c), (d), (e), (h), (i) and (l)
- danger to health and safety - section 13
- invasion of privacy - section 14
- discretion to refuse requesters own personal information - section 38(b)

The Police imposed a fee of \$22.06 for providing access. The requester paid this fee, but requested a fee waiver, pursuant to section 45(4)(c) of the Act. The Police denied this request.

The requester appealed both the Police's decision to deny access to the remaining pages of records and the decision to refuse a fee waiver.

During mediation, the Police acknowledged that none of the records contain the personal information of the appellant, and the section 38(b) exemption claim was withdrawn.

Notices of Inquiry were sent to the appellant and the Police with respect to the fee waiver appeal; and to the appellant, the Police and seven individuals identified on various pages of the records (the affected persons) with respect to the access appeal. Representations were received from the appellant and the Police regarding the fee waiver; and from the Police and three of the affected persons for the access appeal.

## DISCUSSION:

### PERSONAL INFORMATION

The Police claim that section 14 applies to all of the withheld parts of the records, with the exception of the information severed from page 26.

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where 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 reviewed the information contained in the records and find that all of the withheld portions, with the exception of certain severances on pages 2 and 3, contain the personal information of the various individuals interviewed by the Police during the investigation. I find that the names of the two affected persons who are the owner and designated contact person of a courier company, and the information provided by the owner during interviews conducted by the Police (which appears on pages 2 and 3 of the records) is professional as opposed to personal in nature, and does not meet the requirements of the definition of personal information in section 2(1). However, I find that the home address and telephone numbers of these two individuals, which appear on page 2, does qualify as their personal information.

Under section 14(1) of the Act, the Police must refuse to disclose personal information of any person other than the individual to whom the information relates unless one of the exceptions outlined in this section apply. Section 14(1)(a) provides that personal information may be released upon consent. Consent was obtained by the Police from a number of individuals interviewed during the investigation, and the portions of the records containing their personal information were disclosed.

Portions of page 11 of the records contain personal information severed by the Police. Consent to release this information was obtained by the Police, and this page should therefore be disclosed to the appellant in its entirety.

In my view, the only other exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which reads as follows:

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) and (3) of the Act provide guidance in determining whether or not disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

The Police submit that the presumption found in section 14(3)(b) applies. This section reads as follows:

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

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;

I find that all portions of the records which contain the personal information of those individuals who were interviewed by the Police during the investigation, except those who have consented to the release of their personal information, satisfy the requirements of the presumption provided by section 14(3)(b) of the Act. The fact that no legal proceedings were initiated as a result of the investigation does not negate the applicability of this presumption (Orders P-223, P-237 and M-651).

I also find that the personal information at issue does not fall within section 14(4) of the Act.

As far as section 16 (the so-called public interest override) is concerned, the appellant made no representations on the potential application of this section. However, he did include comments in his representations regarding fee waiver which raise the general issue of public interest. I have reviewed the portions of the records which I found satisfy the requirements of section 14(3)(b), and I am not satisfied that there is a compelling public interest in the disclosure of these portions of the records which clearly outweighs the purpose of the mandatory personal information exemption.

Therefore, the presumption in section 14(3)(b) has not been rebutted, and I find that the section 14(1)(f) exception to this mandatory exemption does not apply, and the personal information should not be disclosed.

All parts of the records which were exempt under section 13 of the Act have been disposed of in this discussion of section 14.

## **LAW ENFORCEMENT**

The only parts of the record which do not qualify for exemption under section 14 of the Act are the remaining portions of pages 2 and 3, and the severed code numbers on page 26. Only specific sections of the law enforcement exemption were claimed for these parts of the records.

The Police claim that the information contained on pages 2 and 3 qualifies for exemption under section 8(1)(i), and that the code numbers on page 26 are exempt under section 8(1)(l) of the Act. These two sections read as follows:

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

- (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.

In order for a record to qualify for exemption under section 8(1), the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act. Clearly, an investigation by the Police regarding a break and enter and the theft of handguns involve possible offences under the Criminal Code and satisfies the definition of law enforcement.

The purpose of the exemptions contained in sections 8(1)(i) and (l) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure could reasonably be expected to result in one of the harms set out in these sections. The Police bear the onus of providing sufficient evidence to establish the reasonableness of the expected harm.

As far as the section 8(1)(i) claim is concerned, the Police rely on information provided by the owner of one of the courier companies interviewed during the course of the investigation, who expresses concern for the safety of her business, employees and family. This affected person submits that disclosure would reveal information which would enable criminals to target her business and the drivers employed by her company. She describes the nature of her business, and questions the benefit of releasing information about how goods are moved and warehoused by her company. The representations provided by the Police substantiate some of the affected person's concerns.

I have carefully reviewed the representations and the content of the non-disclosed portions of pages 2 and 3, and find that the Police and the affected person have provided sufficient evidence to establish the requirements for exemption under section 8(1)(i) with respect to the information severed from page 2. As far as the information on page 3 is concerned, it consists of the affected person's statement regarding the circumstances surrounding the alleged break and enter and theft. In my view, neither the Police nor the affected person have provided sufficient evidence to establish that disclosure of these details could reasonably be expected to result in the harms outlined in section 8(1)(i). Consequently, I find that the severed portions of page 3 do not qualify for exemption under this section and should be disclosed.

As far as the code numbers on page 26 are concerned, I find that they are administrative codes relating to the transmission of the contents of page 26 from one police force to another, and do not relate directly to any policing activity. The Police make no specific reference to these code numbers in their representations, and I find that I have been provided with insufficient evidence to conclude that they qualify for exemption under section 8(1)(I) of the Act. Therefore, the remaining portions of page 26 should be disclosed.

## **FEE WAIVER**

The appellant sought a fee waiver based on section 45(4)(c) of the Act, which reads as follows:

A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,

whether dissemination of the record will benefit public health or safety;

In Order P-474, former Assistant Commissioner Irwin Glasberg set out four factors to be considered in determining whether the disclosure of a record would benefit public health and safety:

1. whether the subject matter of the record is a matter of public rather than private interest;
2. whether the subject matter of the record relates directly to a public health or safety issue;
3. whether the dissemination of the record would yield a public benefit by a) disclosing a public health or safety concern or b) contributing meaningfully to the development of understanding of an important public health or safety issue;
4. The probability that the requester will disseminate the contents of the record.

Although Order P-474 was decided under section 57(4)(c) of the provincial Freedom of Information and Protection of Privacy Act, that section has similar wording to section 45(4)(c) of the municipal Act, and I find that the factors identified by Assistant Commissioner Glasberg are equally applicable in the circumstances of this appeal.

The appellant submits that the records relate to an investigation of the theft of handguns en route from a manufacturer to the Kenora Police Department, and that disclosure may reveal the adequacy of the measures taken by the Police and the courier services to ensure the security of the delivery of these weapons. He points to the fact that no arrests were made as a result of the investigation, which he feels have raised doubts in the public about the adequacy of Police investigation measures. The appellant feels that disclosure may assist in explaining why no arrests were made and why the Police were satisfied with the investigation.

The Police point out that all efforts were made to provide the appellant with as much information as possible without compromising the privacy rights of certain individuals involved with the investigation. According to the Police, considerable costs were incurred in providing notices to affected persons, long distance telephone calls and preparing the records for disclosure, most of which were absorbed by the Police. The \$22.06 fee amount consists only of photocopying, minimum preparation charges and delivery costs.

Having carefully reviewed the records and the representations submitted by both parties, and weighed and considered the various factors outlined in Order P-474, I find that the decision of the Police to deny a fee waiver was fair and equitable in the circumstances of this appeal.

Therefore, I uphold the Police's decision to deny a waiver of fees.

ORDER:

1. I order the Police to disclose to the appellant pages 3, 11 and 26 of the records in their entirety, and those portions of page 2 which do not contain the personal information of two of the affected persons, within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order. I have attached a highlighted version of page 2 with the copy of this order provided to the Police's Freedom of Information and Privacy Co-ordinator which identifies the portions which should **not** be disclosed.
2. I uphold the decision of the Police to deny access to the remaining portions of the records not previously disclosed to the appellant.
3. I uphold the decision of the Police to deny a waiver of fees.
4. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

November 22, 1995