



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

ORDER M-669

Appeal M_9500523

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

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 information relating to an incident where the requester was stopped by police officers and searched.

The Police identified nine pages of responsive records, and granted full access to Pages 1-3, and partial access to the remaining six pages. The Police denied access to all withheld portions of Pages 5-8 and part of Page 9 on the basis that they contain information unrelated to the request. The following exemptions were relied on by the Police in denying access to the withheld portions of Page 4 and the responsive portions of Page 9.

- invasion of privacy - section 14
- law enforcement - sections 8(1)(c) and (d)

The requester (now the appellant) accepted that parts of the records are non-responsive, but appealed the decision of the Police to deny access to the remaining portions of Pages 4 and 9. Page 4 is a supplementary report prepared as a result of the incident, and page 9 is an excerpt from the notebook of one of the police officers.

A Notice of Inquiry was provided to the appellant and the Police. Because the records appeared to contain the personal information of the appellant, the parties were asked to comment on the applicability of sections 38(a) and (b) of the Act. Section 38(a) provides an institution with the discretion to refuse to disclose an individual's personal information if certain other exemptions, including sections 8(1)(c) and (d), would apply. Section 38(b) provides an institution with the discretion to refuse to disclose an individual's own personal information if such disclosure would result in an unjustified invasion of another individual's personal privacy.

Both parties submitted representations. Representations were also received from a representative of the appellant's union.

In their representations, the Police withdrew the section 8(1)(c) exemption claim. As a result, much of the withheld information on pages 4 and 9 is no longer at issue and should be disclosed. (Please refer to the Order section of this decision for details.)

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

I have reviewed the portions of Pages 4 and 9 which remain at issue in this appeal and, because the information was obtained in the context of the incident involving the appellant, I find that

both pages contain the personal information of the appellant. I also find that these pages contain the personal information of two other identifiable individuals.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Sections 38(a) and (b) provide two exceptions to this general right of access.

I will now consider whether the withheld portions of Pages 4 and 9 qualify for exemption under section 8(1)(d), as a preliminary step in determining whether the exemption in section 38(a) applies.

Section 8(1)(d) of the Act reads as follows:

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

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;

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 result in one of the harms set out in this section. The Police bear the onus of providing sufficient evidence to establish the reasonableness of the expected harm.

It is clear that the records at issue in this appeal were prepared by police officers in the context of their normal policing activities, which qualify as “law enforcement” matters as defined in section 2(1) of the Act.

As far as the issue of confidentiality is concerned, it has been stated in a number of orders that in order to establish confidentiality under section 8(1)(d) of the Act, the Police must provide evidence of the circumstances in which the information was given.

The Police submit that individuals who provide information to the Police concerning alleged wrongdoing do so on the basis of confidentiality, and the information which would identify these individuals is properly exempt under section 8(1)(d). The portions of Page 4 which the Police have agreed to disclose confirm that a security official from the appellant’s workplace contacted the Police with information regarding possible illegal activity being undertaken by the appellant. As a result of receiving this information, the Police arranged to apprehend the appellant and search his vehicle. The Police submit that the right of security personnel to speak in confidence with the police must be preserved as an essential tool in the investigation into any possible violation of the law, especially where there are concerns of safety and potential dangers.

Having reviewed the record and the representations, in my view, the Police have provided sufficient evidence to establish that the particular security official who contacted the police did so with a reasonable expectation of confidentiality. Therefore, I find that the name and telephone numbers of this individual which appear on pages 4 and 9 of the records satisfy the

requirements of section 8(1)(d), and therefore, qualify for exemption under section 38(a) of the Act.

As far as the name of the other individual which has been severed by the Police from Page 9 is concerned, it is important to point out that this name was provided to the Police by the appellant. I find that this name does not meet the requirements of section 8(1)(d) and does not, therefore, qualify for exemption under section 38(a). I will now consider whether this name is properly exempt under section 38(b) of the Act.

As stated above, the name of the individual appearing on Page 9 of the records was provided by the appellant as part of a statement made by him to one of the police officers at the time of his apprehension. A number of previous orders involving the Metropolitan Toronto Police Services Board have dealt with records containing information provided to the Police by a requester (Orders M-444, M-613 and M-646). Following the reasoning articulated in those orders, I find that disclosure of personal information recorded by a police officer which relates to someone other than the appellant, but which was provided to the police officer by the appellant, would not be an unjustified invasion of the personal privacy of the other individual. Therefore, I find that the name of this individual does not qualify for exemption under section 38(b) and should be disclosed to the appellant.

ORDER:

1. I uphold the decision of the Police not to disclose the name and telephone numbers of the security official found on Pages 4 and 9 of the records.
2. I order the Police to disclose the remaining portions of Pages 4 and 9 of the records to the appellant 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. I have provided a copy of Pages 4 and 9 with the copy of this order to the Freedom of Information and Privacy Co-ordinator for the Police, which highlights those portions which should **not** be disclosed.
3. 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 pages of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____ December 18, 1995
Tom Mitchinson
Assistant Commissioner