



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

ORDER M-649

Appeal M_9500371

Ottawa Regional Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Ottawa-Carleton Regional Police Services Board (now the Ottawa Regional Police Services Board, referred to throughout this order as “the Police”), received a request for access to forensic, scientific, investigative and inquiry reports, relating to the death of an infant. The requester is the infant’s grandfather. The Police denied access to the requested information on the basis of the following exemptions in the Act:

- law enforcement - sections 8(1)(b) and 8(2)(a)
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse requester’s own information - section 38(a).

The requester (now the appellant) appealed this decision. A Notice of Inquiry was provided to the Police and the appellant. Representations were received from both parties. In his representations, the appellant indicated he was only seeking access to the forensic and scientific reports and did not wish to obtain access to any statements. Therefore, only pages 95-99 and 213-223, which consist of such reports, are at issue in this appeal.

DISCUSSION:

LAW ENFORCEMENT

Section 8(2)(a) of the Act states as follows:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

In order for a record to qualify for exemption under section 8(2)(a), 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, which states as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

I have reviewed the records under appeal and the representations submitted and it is clear that the records meet the requirements of part (b) of the definition of “law enforcement” as they were created as part of an investigation to determine whether an offence under the Criminal Code may have been committed. Accordingly, I find that the records meet the definition of “law enforcement”.

In addition, for a record to qualify for exemption under section 8(2)(a) of the Act, the Police must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

I am satisfied that these records are reports within the meaning of section 8(2)(a), because they consist of “a formal statement or account of the results of the collation and consideration of information” (Order 200). I am also satisfied that these reports were prepared in the course of law enforcement. Thus, parts one and two of the test set out above have been met.

I find that the reports were prepared as part of the Police investigation into this incident. The Police have the function of enforcing and regulating compliance with a law (in this case, the Criminal Code). Thus part three of the test has also been met and I find that the records qualify for exemption under section 8(2)(a) of the Act.

In his representations, the appellant questions the exercise of discretion by the Police in invoking section 8(2)(a) to deny access to these records. He suggests that this could have been done for improper motives, to cover up ineptitude. Having reviewed the records at issue and the representations of the parties, I have no evidence before me to substantiate this allegation. Moreover, in their representations, the Police explain their reasons for exercising their discretion to deny access under this section. The Police indicate that they seek to preserve the integrity of the investigation, which is ongoing. I see no reason to interfere with this exercise of discretion.

Accordingly, I find that the records at issue are exempt under section 8(2)(a).

The appellant’s letter of appeal indicates that the lack of information available to him concerning this matter has been distressing. I sympathize with the appellant in this regard, but unfortunately, in the circumstances of this case, this does not alter my conclusion that the exemption properly applies.

Because of the findings I have made, it is not necessary for me to consider the possible application of sections 8(1)(b), 14(1) or 38(b). In addition, because the reports do not contain any personal information of the appellant, it is not necessary for me to consider the application of section 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
John Higgins
Inquiry Officer

_____ November 17, 1995