



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

ORDER M-711

Appeal M_9500592

Durham Regional Police Services Board



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NATURE OF THE APPEAL:

The Durham Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of extracts from the notebooks of five named police officers. The requester specified the dates and times of the extracts she sought. The request was clarified to include all information contained in the notebooks of four of the officers between the hours stated in the request (Officers A, B, C and D). With respect to the fifth notebook (that of Officer E), the requester explained that she sought access only to that information related to her son recorded within the specified time frame. The requester's son had given his consent for her to act as his agent for the purposes of this request.

Pursuant to section 21 of the Act, the Police notified five individuals whose interests might be affected by the disclosure of the requested information. Two of the individuals consented to the disclosure of all of the information related to them. One consented to the disclosure of all of the information with the exception of the name. The letter addressed to the fourth individual could not be delivered. The fifth individual did not respond to the notice.

The Police then issued a decision in which they granted partial access to the notebooks of Officers A, B, C and D. Access to portions of the notebooks was denied on the basis of the following exemptions in the Act:

- facilitate commission of an unlawful act - section 8(1)(l)
- invasion of privacy - section 14(1)

The Police advised the requester that there was no notebook for Officer E.

The requester (now the appellant) appealed the decision of the Police.

During mediation, the Appeals Officer confirmed with the appellant that the notebooks of Officers A, B and C were at issue in another appeal, M-9500347. Accordingly, the scope of the present appeal was limited to the withheld portions of Officer D's notebook, found at pages 17_22, as well as the reasonableness of the search of the Police to locate the notebook of Officer E.

A Notice of Inquiry was sent to the Police and the appellant. Representations were received from both parties. The representations of the appellant include two videotapes.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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 withheld from pages 17-22 of Officer D's notebook. Most of the information consists of the personal information of several identifiable individuals. These pages contain no personal information relating to either the appellant or her son.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it "... 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. Where one of the presumptions 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 if 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.

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

The Police submit that the personal information in the notebook was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)). Based on the submissions of the Police, I find that the personal information was compiled as part of a number of investigations into possible violations of the Criminal Code and Highway Traffic Act. Therefore, the presumption in section 14(3)(b) applies.

The appellant's submissions do not directly address the issue of the disclosure of this personal information. She appears to be suggesting that disclosure of the information is desirable for the purpose of subjecting the activities of the Police to public scrutiny (section 14(2)(a)). However, she has provided no explanation as to how disclosure of the personal information at issue would achieve this result.

Furthermore, as I have previously indicated, a presumption in section 14(3) may only be overcome by the application of section 14(4) or section 16 of the Act. The information does not fall within the types of information listed in section 14(4).

Although she does not specifically refer to section 16, the appellant suggests that there is a compelling public interest in disclosure of the records. However, she has not identified the nature of this public interest. Nor has she explained how disclosure of the personal information in the records would satisfy this interest. Having reviewed the records and all the materials submitted by the appellant, and, in the absence of information to the contrary, I am of the view that this matter is now a private interest of the appellant. Whatever public interest there may have been in this issue has been addressed in the past by a multitude of agencies that have

reviewed the manner in which the Police dealt with the appellant and her son. The appellant's outstanding concerns do not relate to the access to information issues in this appeal.

In these circumstances, I find that disclosure of the personal information would result in an unjustified invasion of the personal privacy of the individuals referred to in the notebook. Therefore, the mandatory exemption in section 14(1) applies to this information.

The balance of the information that has been withheld from pages 17-22 of the notebook consists of the times at which Officer D performed certain tasks and certain police codes. The times appear on pages 18-22. I find that the codes and times do not constitute personal information. As the Police do not claim that any other exemptions apply to the times, this information should be disclosed to the appellant.

The Police have exempted the codes under section 8(1)(l). I will address the application of this exemption in the next section of this order.

FACILITATE THE COMMISSION OF AN UNLAWFUL ACT

The Police have withheld their operational "ten" codes pursuant to section 8(1)(l) of the Act, which states:

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

facilitate the commission of an unlawful act or hamper the control of crime.

The Police have indicated that they use such codes to shorten radio transmissions, to standardize radio responses and, most importantly, to reduce the ability of those involved in criminal activity from easily tracking the activities of police officers. They submit that they applied section 8(1)(l) on the basis of this last concern.

The Police have explained the meaning of the three codes which have not been disclosed. They have provided, as part of their representations, an example of a case in which those involved in criminal activities acquired a list of the police codes and how it undermined the effectiveness of the Police in their attempt to control these activities.

The purpose of the exemption in section 8(1)(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 the harm set out in this section. I am satisfied that the Police have provided sufficient evidence to establish that disclosure of these "ten" codes could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Accordingly, I find that the requirements for exemption under section 8(1)(l) have been met with respect to the three codes at issue.

REASONABLENESS OF SEARCH

When the Police received the request, they forwarded a memorandum to each of the commanding officers of the two officers whose notebooks were not yet in the possession of their Information and Privacy Unit. The memorandum for Officer E was returned with the notation that no notebook exists.

As part of their representations, the Police have included an affidavit from Officer E. The officer indicates that for the time period requested, that is for the shift that commenced at 1800 hours on December 4, 1992 until 0600 hours on December 5, 1992, he was assigned to the Operational Control Centre in the Communications Branch as a staff sergeant. The officer affirms that during this period of time he did not keep a notebook as his duties were of an administrative nature.

The appellant has submitted extracts from the policies and procedures of the Police dealing with the keeping of notebooks. She has highlighted several sections of the policies including the following:

Constables, while on duty, shall carry an issue memorandum book which shall be made out in the prescribed manner (section 3.14.7).

In addition, I note that, pursuant to section 3.8.8, staff sergeants and detective sergeants, while on duty, are also required to carry an issued notebook and complete it in the prescribed manner. Officer E was a staff sergeant at the relevant time.

However, section 4.13.2, which the appellant has not highlighted, states:

A member **whose duties require his keeping a memorandum book** shall record ... [emphasis added]

The Freedom of Information and Privacy Co-ordinator of the Police has explained that, in effect, it is the Chief of Police who decides which members' duties require the keeping of memorandum books. He has further explained that the Chief has decided that members of the Police who are functioning in an administrative position, as was Officer E at the relevant time, are not required to keep a notebook.

The Act does not require the Police to prove with absolute certainty that the requested record does not exist. In order to properly discharge their obligations under the Act, the Police must provide me with sufficient evidence to show that they have made a **reasonable** effort to **identify** and locate records responsive to the request. In my view, in cases where the appellant has not provided sufficient evidence to support the existence of responsive records, and the Police provide an explanation given by an employee experienced with such records and/or program as to why such a record **would not** exist, the Police have provided sufficient evidence to show that it has made a reasonable effort to **identify** the record. It is not incumbent on the Police to undertake a search for such a record.

In this case, I am satisfied that, by contacting the commanding officer of Officer E and receiving the information as to why no notebook existed for this officer for this time period, the Police made a reasonable effort to identify the record.

ORDER:

1. I find that the decision of the Police on the existence of the notebook of Officer E was reasonable and this portion of the appeal is denied.
2. I uphold the decision of the Police with respect to all the records at issue **except for** the times recorded on pages 18-22 of the notebook of Officer D.
3. I order the Police to disclose the times recorded on pages 18-22 of the notebook of Officer D by sending a copy of this information to the appellant by **March 1, 1996**.
4. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the information which is disclosed to the appellant pursuant to Provision 3.

Original signed by: _____
Anita Fineberg
Inquiry Officer

February 15, 1996