



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

ORDER M-743

Appeal M_9600028

Niagara Regional Police Services Board



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NATURE OF THE APPEAL:

The Niagara 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 the requester's Criminal Record as well as the CPIC (Canadian Police Intelligence Computer) printout of information relating to him. The Police identified several records which were responsive to the request and denied access only to the CPIC printout, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 8(1)(a), (c) and (g)

The requester (now the appellant) appealed the Police's decision to deny access. A Notice of Inquiry was provided to the appellant and the Police. Because the record at issue appeared to contain the appellant's personal information, the Notice of Inquiry raised the possible application of section 38(a) of the Act (discretion to refuse requester's own information). Representations were received from both parties. In their representations, the Police submit that section 15(a) of the Act is relevant in the circumstances of this appeal. I will address the application of this section below.

DISCUSSION:

PERSONAL INFORMATION

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. I find that the record contains the personal information of the appellant only.

Section 36 of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(a) of the Act, the Police have the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 6, 7, 8, 9, 10, 11, 12, 13 or 15 would otherwise apply to the disclosure of that personal information.

LAW ENFORCEMENT

The Police submit that the CPIC printout qualifies for exemption under sections 8(1)(a), (c) and (g) of the Act. These sections state:

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

- (a) interfere with a law enforcement matter;

...

- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- ...
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

Section 8(1)(a)

In order for a record to qualify for exemption under section 8(1)(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. I find that the record at issue, the CPIC printout, clearly relates to a policing matter which falls within the law enforcement definition found in section 2(1).

The purpose of the section 8(1)(a) exemption is to provide the Police with the discretion to preclude access to records in circumstances where the disclosure of the record would interfere with an **ongoing** law enforcement matter. I find that none of the information contained in the top half of the CPIC printout (lines 1-21) relates to an ongoing law enforcement matter. Rather, this information relates to the past involvement of the appellant with the Police which has now been resolved through the courts. Accordingly, I find that section 8(1)(a) has no application to the information contained in the record which relates to the offence for which the appellant was convicted.

The bottom half of the record (lines 22-33) pertains to an on-going police investigation in which the appellant was the alleged victim of a crime. Lines 23, 25, 26 and 27 contain only the personal information of the appellant and I find that their disclosure could not reasonably be expected to interfere with a law enforcement matter within the meaning of section 8(1)(a). I find, however, that the disclosure of lines 24 and 28-33 to the appellant could reasonably be expected to interfere with an ongoing law enforcement matter and that this information qualifies for exemption under section 8(1)(a).

Section 8(1)(c)

In Order 170, Inquiry Officer John D. McCamus considered the interpretation of section 14(1)(c) of the provincial Freedom of Information and Protection of Privacy Act, which section is equivalent to section 8(1)(c) of the municipal Act. Inquiry Officer McCamus stated:

In order to constitute an "investigative technique or procedure" in the requisite sense, it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that the particular technique or procedure is generally known to the public would normally lead to the conclusion that such compromise would not be effected by disclosure and according that the technique or procedure in question is not within the scope of the protection afforded by section 14(1)(c).

I concur with Inquiry Officer McCamus' interpretation of section 14(1)(c), and adopt it for the purposes of section 8(1)(c) and this appeal.

In my view, the record does not contain any information which relates to an “investigative technique or procedure” within the meaning of section 8(1)(c). Rather, the record contains only information from the CPIC database relating to the requester’s involvement with the Police. I find that the disclosure of this information would not reveal investigative techniques or procedures and that section 8(1)(c) has no application to the record.

Section 8(1)(g)

The Police submit that the disclosure of the record would interfere with the gathering of or would reveal law enforcement intelligence information respecting certain persons which is contained on the CPIC system. I have reviewed the record and the representations of the Police and find that the information contained in the top part and in lines 1, 3, 4, 5, 18, 19, 20 and 21 of the record relates to computer locations and access codes used by the Police when accessing information on the CPIC system. I find that this information, if disclosed, could reasonably be expected to enable an individual to access the law enforcement intelligence information which is contained on the CPIC system or otherwise interfere with its operation. Accordingly, I find that the disclosure of the information contained in the top section and lines 1, 3, 4, 5, 18, 19, 20 and 21 of the record could reasonably be expected to reveal law enforcement intelligence information. These portions of the record qualify, therefore, for exemption under section 8(1)(g).

Lines 2 and 6-17 contain only the appellant’s personal information, which is known to him. I find that the disclosure of this information could not reasonably be expected to interfere with the gathering of, nor would it reveal, law enforcement intelligence information. This portion of the record does not, therefore, qualify for exemption under section 8(1)(g).

As I have found that the top part and lines 1, 3, 4, 5, 18, 19, 20, 21, 24 and 28-33 of the record qualify for exemption under sections 8(1)(a) and (g), they are exempt from disclosure under section 38(a).

INFORMATION PUBLISHED OR AVAILABLE

The Police have raised the possible application of section 15(a) in their representations. Without deciding on the appropriateness of the raising of this discretionary exemption at the Inquiry stage of the appeals process, I find that a CPIC printout of information does not qualify as a record which is currently available to the public and would not, therefore, qualify for exemption under section 15(a).

ORDER:

1. I uphold the decision of the Police to deny access to the top section and lines 1, 3, 4, 5, 18, 19, 20, 21, 24 and 28-33 of the record.
2. I order the Police to disclose to the appellant the remaining portions of the record by providing him with a copy by **April 17, 1996**.

3. 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 record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

Donald Hale
Inquiry Officer

_____ March 27, 1996