



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

## **ORDER M-704**

Appeals M\_9500437, M\_9500439 and M\_9500440

London Police Services Board



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## NATURE OF THE APPEALS:

The London Police Services Board (the Police) received three requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to three specific occurrence reports. The requests were all submitted by the same individual. The Police granted partial access to the records responsive to one request and denied access to all of the records relating to the other two requests. The requester appealed the denial of access in each of the three requests.

Appeal Numbers M-9500437, M-9500439 and M-9500440 were assigned to the three appeals. Because the parties, the issues and the type of records requested are the same in each of the appeals, this order will dispose of all three appeals.

The records withheld in whole or in part in each of the appeals are as follows:

- (1) Appeal Number M-9500437: occurrence control form and the occurrence report (access denied in full);
- (2) Appeal Number M-9500439: occurrence control form and the occurrence report (partial access);
- (3) Appeal Number M-9500440: occurrence control form, occurrence report with statements and identification report (access denied in full).

The Police rely on the following exemptions in the Act to deny access to the records:

- facilitate commission of unlawful act - section 8(1)(l)
- law enforcement report - section 8(2)(a)
- invasion of privacy - section 14(3)(b)

The appellant is a writer and journalist who is seeking access to the information in occurrence reports. During mediation, the appellant claimed that there is a compelling public interest in the disclosure of the records, thereby raising the application of section 16 of the Act.

A Notice of Inquiry was sent by the Commissioner's office to the appellant and the Police. Representations were received from both parties.

## DISCUSSION:

### LAW ENFORCEMENT

The Police claim that section 8(2)(a) applies to the records and that section 8(1)(l) applies to the police codes contained in the records. I will first consider the application of section 8(2)(a) to the records. Section 8(2)(a) reads:

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 this section, the matter to which the record relates must first satisfy the definition of "law enforcement" as defined in section 2(1) of the Act. The records consist of occurrence reports, occurrence control forms, statements and identification reports prepared by the Police during the course of investigations into possible violations of the Criminal Code, which clearly qualify as law enforcement matters within the meaning of section 2(1) of the Act.

The word "report" is not defined in the Act. Based on previous orders, however, for a record to be a report, it must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

I have reviewed the records and the representations submitted by the Police. I find that the records contain the statements of witnesses and the observations of the police officers during the investigations. I find that the records contain observations and recordings of fact and do not qualify as "reports" for the purposes of section 8(2)(a) of the Act.

I will now consider the application of section 8(1)(l) to the police codes which appear in the records. This section of the Act reads as follows:

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 submit that the city is divided into patrol areas and that the codes are related to the assignment of police officers to ensure that the patrol areas are adequately manned at all times. The Police have provided detailed evidence to show that disclosure of this information could reasonably be expected to result in the harm identified in section 8(1)(l). I am, therefore, satisfied that in the circumstances of this case, section 8(1)(l) applies to the police codes which appear in the records. I have highlighted the relevant information which should not be disclosed.

I will now determine whether disclosure of the remaining parts of the records would constitute an unjustified invasion of personal privacy under section 14(1) of the Act.

## **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 carefully reviewed the information in the records. In my view, the records contain information which relates to the individuals named in the records and therefore, constitutes their personal information. The records do not contain the personal information of the appellant. I have highlighted the portions of the records which I have found qualify as the personal information of the individuals named therein.

The records also contain the names of the police officers who authored the records. I find that this information appears in the context of these individuals' employment related duties and does not qualify as personal information.

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 appellant submits that the exception in section 14(1)(e)(ii) applies in the circumstances of this case as the information is being sought as part of the research for a book.

In my view, section 14(1)(e)(ii) must be read and interpreted in conjunction with the other parts of section 14(1)(e). Therefore, all three conditions in sections 14(1)(e)(i), (ii) and (iii) must be satisfied before the "research purpose" can be said to apply.

Section 14(1)(e) reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

for a research purpose if,

- (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained;
- (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, **and**
- (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations;

The appellant submits that this section applies as "research is being conducted for the purpose of a book and therefore the information must be acquired in identifiable form."

Section 14(1)(e) is the only provision of the Act where the granting of conditional access is explicitly contemplated (Order 164). Even if I accepted the appellant's position that disclosure is for a research purpose, the appellant has provided me with no evidence that the conditions contemplated in sections 14(1)(e)(i), (ii) and (iii) have been satisfied. Therefore, the exception in section 14(1)(e) of the Act does not apply.

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:

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), (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 Police 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 presumption in section 14(3)(b) applies to the records. 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.

The Police contend that the information in the records was compiled and is identifiable as part of their investigations into violations of the Criminal Code. I have reviewed the personal information and I am satisfied that the presumed unjustified invasion of personal privacy under section 14(3)(b) applies. I find that section 14(4) does not apply.

The appellant submits that a compelling public interest exists in the disclosure of the personal information, in all three appeals, to enable the public to verify the activities or claims of the Police. The appellant's representations emphasize the activities of the Police with respect to one individual. The appellant states that "the activities of the London Police and the individual

[named] have received national publicity and have repeatedly been criticized.” The record in Appeal Number M-9500437 relates to a complaint filed by the named individual to the Police. This individual is not named in the other records.

I have considered the submissions of the appellant but have not been provided with any evidence that a **compelling** and a **public** interest exists in the disclosure of the personal information which **clearly** outweighs the **purpose** of the exemption. I find therefore, that section 16 is not applicable in the circumstances of these appeals. Therefore, the exception in section 14(1)(f) does not apply and disclosure of the personal information would constitute a presumed unjustified invasion of personal privacy.

To summarize my findings with respect to the records at issue, I have found that the records do not qualify as reports for the purposes of section 8(2)(a) of the Act. I have found that section 14(3)(b) applies to the personal information in the records and that section 8(1)(l) applies to the police codes which appear within the records. I have highlighted this information on the copy of the records sent to the Police’s Freedom of Information and Privacy Co-ordinator.

**ORDER:**

1. I uphold the decision of the Police to deny access to those highlighted portions of the records as shown on the copy provided to the Freedom of Information and Privacy Co\_ordinator.
2. I order the Police to disclose the remaining parts of the records (i.e. the non-highlighted parts) to the appellant by sending copies of the records to the appellant on or before **February 26, 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 records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

February 9, 1996