



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

ORDER M-725

Appeal M_9500602

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). The requester sought access to information related to a fire which had occurred at his place of business.

The Police located the responsive records and denied access to them, in their entirety, pursuant to the following exemption under the Act:

- law enforcement - section 8(1)(a)

The requester (now the appellant) appealed this decision.

A Notice of Inquiry was sent to the appellant and the Police. During the inquiry, the appellant was represented by counsel. Representations were received from the Police and counsel for the appellant. However, in this order, I will use the term “appellant” to refer to the owner of the business.

The Police subsequently issued a revised decision letter in which it claimed that the records were also exempt pursuant to sections 8(1)(b) (law enforcement) and 38(a) (discretion to refuse requester’s own information) of the Act. This decision letter was sent to the appellant within the 35-day time period during which institutions may claim the application of discretionary exemptions in addition to those set out in their decision letter. The appellant was then given the opportunity to make submissions on the application of these additional exemptions. He indicated that his submissions on the application of section 8(1)(a) could be applied to section 8(1)(b).

The records at issue consist of 34 pages of occurrence and supplementary reports, a property report and excerpts from police officers’ notebooks.

DISCUSSION:

DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION/LAW ENFORCEMENT

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including 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 records and find that they contain the personal information of the appellant as well as that of 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. 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 certain exemptions, including sections 8(1)(a) and (b), would otherwise apply to that information. Sections 8(1)(a) and (b) state:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In order for either of these sections to apply, the information must first satisfy the definition of "law enforcement" set out in section 2(1) of the Act 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);

The purpose of the exemptions contained in sections 8(1)(a) and (b) of the Act 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 interfere with an ongoing law enforcement matter or investigation. The Police bear the onus of providing evidence to substantiate that, first, a law enforcement matter or investigation is ongoing and second, that disclosure of the records could reasonably be expected to interfere with the matter or the investigation.

I will begin with section 8(1)(a).

The Police state that the Fire Marshall's Office concluded that the fire was deliberately set and that, therefore, the records relate to an investigation of probable arson, an offence contrary to the Criminal Code. I agree with this characterization of the records and find that they relate to a "law enforcement" matter which is still outstanding. In his submissions, the appellant states that he is aware of the results of the Fire Marshall's investigation.

Having met the first requirement of the section 8(1)(a) exemption, I must now determine whether the disclosure of the records could reasonably be expected to **interfere** with the law enforcement matter.

The appellant states that in order to discharge this onus, it is not sufficient for the Police to merely cite an on-going investigation and that, further, it is insufficient to merely show that the

party requesting the information is somehow involved in the investigation. I agree with this statement of the type of information the Police must provide in order to establish the application of the exemption.

The representations of the Police explain how disclosure of the information contained in the records could hamper or impede the effectiveness of the law enforcement matter. The Police also identify two specific concerns regarding the prejudicial impact which the release of the records could have on this matter. Because of the nature of this information, I am unable to describe the details in this order. However, based on the evidence provided by the Police I am satisfied that disclosure of the records could reasonably interfere with a law enforcement matter under section 8(1)(a). The records are, therefore, properly exempt from disclosure pursuant to section 38(a) of the Act.

I, therefore, need not consider the application of section 8(1)(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____ March 7, 1996
Anita Fineberg
Inquiry Officer