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

ORDER M-779

Appeal M_9500678

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) for access to the requester's entire file dating back to 1981. The Police sought clarification from the requester. The requester indicated that her request included access to all her personal information, including correspondence from her to the Police. In particular, the requester sought access to information relating to her arrests in 1984, 1987, 1990 and 1994 and to specified periods of her hospitalization at three hospitals.

The Police identified the responsive records and granted access to the records with the exception of some portions of a four-page Record of Arrest. Access to this information was denied on the basis that disclosing this information would constitute an unjustified invasion of the personal privacy of another individual (section 14(1) of the Act).

In its decision letter, the Police also advised the requester that hospitals were not subject to the Act and suggested that she contact the hospitals directly for the information sought.

The requester appealed the decision to deny access to the withheld portions of the Record of Arrest. Because the records that she received did not include her own communications with the Police, she indicated that more records should exist.

As a result of mediation, the Police conducted a further search for the records identified in the letter of appeal and located one 1987 computer entry relating to an incident which resulted in an arrest in 1990. However, the Police indicated that the actual records pertaining to this entry were destroyed in accordance with the Police Records Retention Schedule. No other records were located. The appellant stated that copies of her own written communications to the Police should exist and on that basis, the reasonableness of the search conducted by the Police for records responsive to the request remains an issue in this appeal.

A Notice of Inquiry was sent to the Police and to the appellant. Because the occurrence report may contain information relating to both the appellant and other identifiable individuals, section 38(b) was also included in the Notice of Inquiry. Representations were received from both parties.

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. I have reviewed the withheld portions of the Record of Arrest and in my view, it contains information that relates to the appellant and another identifiable individual. I find that the record contains the personal information of both the appellant and one other individual.

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(b) of the Act, where a record contains the personal information of both a requester and another individual, and the Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found 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 where 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 contained 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 considerations that are relevant in the circumstances of the case.

The Police submit that section 14(3)(b) of the Act applies to the withheld portions of the record because the information was compiled and is identifiable as part of an investigation into a possible violation of law.

I have reviewed the information in the record together with the representations of the parties. I find that the personal information in the record was compiled and is identifiable as part of an investigation into a possible violation of law (the Criminal Code). Accordingly, the withheld portions of the Record of Arrest are subject to the presumption in section 14(3)(b) of the Act.

Sections 14(4) and 16 do not apply in the circumstances of this case.

Accordingly, I find that disclosure of the personal information which has been withheld would constitute an unjustified invasion of personal privacy of the individual other than the appellant and is properly exempt under section 38(b) of the Act.

REASONABLENESS OF SEARCH

The appellant claims that additional records and in particular, copies of her written communication to the Police, should exist. In her submissions, the appellant provided information about her residences and jobs in Windsor, Hamilton, St. Catharines, London and Barrie. This information is not relevant to the request or the appeal since the appellant's request was submitted to the Police in Toronto. The appellant's submissions also include information concerning her hospital stays, arrests, stolen furniture, and information pertaining to her communications to the Police, including the Public Complaints Bureau.

Where a requester provides sufficient details about the records which he or she is seeking and the Police indicate that such a record does not exist, it is my responsibility to ensure that the Police

have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its 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.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nonetheless, provide a reasonable basis for concluding that such records may, in fact, exist.

After the Notice of Inquiry was issued, the Police conducted a search for the written communications submitted to them by the appellant and located 30 pages of records. The Police issued a supplementary decision letter, granting partial access to the records. Portions of the appellant's letters to the Police were withheld from her pursuant to sections 14(3)(d), 14(3)(g) and 38(b) of the Act.

The appellant advised this office that she is not appealing the exemptions claimed by the Police to apply to her correspondence. Accordingly, I will only consider the reasonableness of the searches conducted by the Police.

In their representations, the Police describe the searches conducted by them for records responsive to the appellant's request, as clarified. The Police explain that clarification as to the types of records sought was necessary as there is no central data registry which can be accessed simply by using a requester's name.

The Police state that a thorough search was conducted for the appellant's records dating back to the early and mid-1980s and they explain that these records, if they existed, would have been purged in accordance with the Metropolitan Toronto Police Records Retention Schedule. The Police submit that they attempted to assist the requester within the spirit of the Act, particularly with respect to her request for hospital records.

With respect to the request for copies of her own correspondence, the Police point out that the appellant had initially indicated to them that she no longer wanted access to these records. During mediation, the appellant changed her mind and stated that she now wanted the records. A further search was conducted at the Police Services Board and the Public Complaints Bureau. As I have indicated, the 30 pages of records located as a result of this additional search have been partially disclosed to the appellant.

The appellant insists that the Police have not provided her with all of the records she submitted to them. The appellant claims that records are still missing and she has provided a list of fourteen areas where she believes her records exist. This list includes Canada Post, Bell Canada and City Hall. The latter are not institutions under the Act. In my view, if the appellant wishes to obtain further police records, she must submit a request to the Police with sufficient details to enable the Police to identify the record sought.

I have carefully considered the representations of both parties. In the circumstances of this case, I am satisfied that the Police have made a reasonable effort to identify and locate records responsive to the request.

ORDER:

1. I uphold the decision of the Police to deny access to the withheld portions of the Record of Arrest.

2. I find that the search conducted by the Police for records responsive to the request was reasonable in the circumstances and this part of the appeal is dismissed.

Original signed by: May 31, 1996
Mumtaz Jiwan
Inquiry Officer