



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

ORDER M-794

Appeal M_9600047

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 records, including the Crown Brief, related to court proceedings involving the requester in which he was tried and convicted on a charge of assault with intent to resist arrest. The charge was laid following an altercation between the requester and a federal Immigration Officer. The Police located 42 pages of responsive records and granted access to some of them, in whole or in part. The Police denied access to the remaining records, based on the following exemptions contained in the Act:

- relations with other governments - section 9(1)(a)
- solicitor-client privilege - section 12
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse requester's own information - section 38(a)

The requester, now the appellant, appealed the decision of the Police to deny access to the records. During the mediation of the appeal, the appellant agreed to limit the scope of his request to include only Page 2 (Record of Arrest), Page 8 (Declaration), Pages 9 to 17, 19 to 22 and 29 (Officer's Notes), Pages 33 to 36 (Documents from Crown Brief) and Page 37 (CPIC Printout).

A Notice of Inquiry was provided to the appellant, the Police and to three individuals whose rights may be affected by the disclosure of the records (the affected persons). Representations were received from the Police and the appellant. The Police indicate in their representations that they no longer rely on the section 12 exemption for Pages 33 to 36. As no other exemptions have been claimed to apply to these pages, they should be disclosed to the appellant. Additional representations were solicited and received from the Royal Canadian Mounted Police (the RCMP) with regard to the application of section 9(1)(a) to Page 37 only.

PRELIMINARY ISSUE:

RESPONSIVENESS OF RECORDS

I have reviewed the records at issue in light of the wording of the appellant's original request and find that Pages 9 and 10 are notes taken by one of the Immigration Officers on the day of the incident, but prior to his involvement with the appellant. These pages do not contain information which relates to the appellant. In addition, the information contained in the top portion of Page 19 concerns another investigation undertaken by the other Immigration Officer on that day and similarly does not relate to the appellant. Page 29 contains information which does not pertain to the appellant as it concerns the activities of the Police Officer prior to her answering the call for assistance from the Immigration Officers.

I find, therefore, that as the information contained in these portions of the records does not relate to the appellant, it falls outside the scope of the original request. I will not, accordingly, be addressing the application of the exemptions to these portions of the records.

INVASION OF PRIVACY

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

The Police submit that Pages 11 to 17 and 19 to 22 are notes taken by two Immigration Officers following the altercation which resulted in the charge being laid against the appellant. They argue that since the Immigration Officers appeared at the appellant’s trial as the victim and witness to the assault, the information about the incident in these records is their personal information, as opposed to information which relates to these individuals solely in their professional capacities as law enforcement officers. I have reviewed these records and find that, in the circumstances of this appeal, they contain the Immigration Officers’ personal information, as well as that of the appellant and one of the affected person.

Pages 2 and 8 contain the addresses, telephone and badge numbers and start dates of the Immigration Officers and may also properly be characterized as their personal information within the meaning of section 2(1) of the Act. In addition, Page 2 contains the personal information of the appellant and the other affected person. Page 8 also contains the personal information of the appellant.

Page 37 contains only the personal information of the appellant and sections 14(1) and 38(b) cannot, therefore, apply to exempt it from disclosure.

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 the appellant 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 appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to his own personal information, the only situation under section 38(b) in which he can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual’s privacy.

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 in section 14(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is 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), as well as all other considerations that are relevant in the circumstances of the case.

The Police submit that all of the information contained in Pages 2, 8, 11 to 17, 19 to 22 and 29 was compiled and is identifiable as part of an investigation into a possible violation of law. If this is the case, the information falls within the presumption in section 14(3)(b) of the Act.

I have carefully reviewed the representations of the parties and the records and have made the following findings:

1. The Declaration (Page 8) and the notes taken by the Immigration Officers (Pages 11 to 17 and 19 to 22) relate to the investigation and attempted arrest of the appellant for offences under the Immigration Act. The Record of Arrest (Page 2) and the notes taken by the Police Officer (Page 29) relate to the Police investigation of the charge of assault while resisting arrest brought against the appellant. I find, accordingly, that the disclosure of the personal information which is contained in these pages would constitute a presumed unjustified invasion of privacy under section 14(3)(b) of the Act.
2. None of the personal information contained in these records fall under section 14(4) and the appellant has not raised the possible application of section 16 of the Act.
3. Accordingly, I find that the information contained in Pages 2, 8, 11 to 17, 19 to 22 and 29 is exempt from disclosure under section 38(b) of the Act.

RELATIONS WITH OTHER GOVERNMENTS/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Page 37 contains only the personal information of the appellant. As noted above, section 36(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of institutions covered under the Act. Another exception to this general right of access is section 38(a) of the Act, which reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, **9**, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

The Police have claimed that section 9(1)(a) of the Act applies to Page 37. This section states:

A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

the Government of Canada;

In my view, in order to deny access to a record under section 9(1), the Police must demonstrate that the disclosure of the record could reasonably be expected to reveal information which the

Police received from one of the governments, agencies or organizations listed in the section, **and** that this information was received by the Police in confidence.

Page 37 is a computer printout containing the criminal history of the appellant. The Police state that this information was received from the Royal Canadian Mounted Police (the RCMP), a law enforcement agency of the Government of Canada. The information on Page 37 was electronically retrieved by the Police from the Canadian Police Information Central Data Bank (CPIC), a computerized information system. This system is maintained by the RCMP as a database to which law enforcement agencies supply and from which they can obtain a wide range of information relating to law enforcement. The sole police agency which contributed the information contained on Page 37 was also the RCMP; it was not supplied to the CPIC database by the Police. For this reason, the Police argue, the exemption under section 9(1)(a) applies.

As stated above, there are, however, two elements which must be satisfied in order to meet the requirements of section 9(1)(a). While I agree that the information contained in the CPIC printout was received from the RCMP, an agency of the Government of Canada, the Police have not provided me with any evidence that they received the information "in confidence". Further, Page 37 does not indicate on its face that it is intended to be treated in a confidential manner.

Section 52(1) of the Act empowers the Commissioner (and therefore his delegate) to conduct an inquiry to review a head's decision. As part of my responsibility in conducting an inquiry, I am obliged to go beyond the submissions of the parties and ascertain other relevant information which will assist me in rendering a proper decision. To this end, I located a copy of the CPIC Reference Manual Appendix IV-1-A, Pages 3 and 4 dated November 1995, which sets out in detail the circumstances in which the criminal record information contained on the CPIC system will be disclosed **by the RCMP**. Item 10 of the Policy described in the Appendix allows the disclosure of criminal record information to "(I)ndividuals who are entitled to copies of their own records under the Privacy Act ...".

Representations were also solicited and received from the RCMP on the application of section 9(1)(a) of the Act to Page 37 for the purpose of determining all of the relevant circumstances surrounding the supply of CPIC information by the RCMP to municipal police forces. Based on the submissions of the RCMP, it is clear that there exists an expectation of confidentiality with regard to the information contained in the CPIC system which the RCMP provides to municipal police forces across Canada. The RCMP submits that all of the information in a CPIC criminal record printout is considered to be under its control and is not to be disclosed by any of the police organizations which have access to the CPIC system unless that organization inputted the information into the CPIC system originally. The RCMP will disclose CPIC information in certain circumstances upon being satisfied that the requester is in fact the individual to whom the record relates.

I am satisfied that the RCMP, the originator of the records at issue in this appeal, has an expectation that criminal record information contained in the CPIC system which pertains to an individual is to be treated in a confidential manner. I find, therefore, that the RCMP maintains the requisite expectation of confidentiality about CPIC criminal record information such as that contained in Page 37. The second element required for the application of section 9(1)(a) has,

therefore, been met. I find that Page 37 qualifies for exemption from disclosure under section 9(1)(a) and is, therefore, exempt under section 38(a).

ORDER:

1. I order the Police to disclose to the appellant Pages 33 to 36 by sending him a copy by July 24, 1996 but not before July 19, 1996.
2. I uphold the decision of the Police to deny access to the remaining records.
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 1.

Original signed by: _____

Donald Hale
Inquiry Officer

June 19, 1996