



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

ORDER MO-1171

Appeal MA-980202-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request to the Toronto Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to information relating to the bombing of an abortion clinic in 1992. The appellant specifically asked for technical data and explained that he did not want information which might incriminate any person or persons with respect to the incident. The appellant provided a list of the specific items he was seeking as follows:

1. any lists summarizing the records available;
2. the original report;
3. any record which would show that the premises security system recorded openings and closings and any record which would indicate that the openings and closing were analysed and compared to similar periods in other months;
4. any record which identified the sensor which was the initial alarm triggers and any record which has information on the number and causes of the explosions;
5. any record containing information about a man pouring liquid under a door and a man returning to a ground level door where he drilled a hold and ignited the volatile mix;
6. any reports or data on the size of the drill bit, the minimum size drill and the time required; whether the hole was drilled from inside out or outside in and any analysis of whether the estimated time to drill matched the MacLean's magazine videotaped time to drill;
7. any reports comparing the 1992 fire bombing with an incident which occurred at the same premises in July of 1983. Any indication that the person named in the CIS report prepared by [a named individual] was interviewed;
8. any memos, records assigning responsibility for the police investigation and any memos, records slowing down or terminating the police investigation.

The Police clarified with the appellant that he was seeking records relating to an arson at the location of a particular abortion clinic.

The Police located 311 pages of responsive records and denied access to them on the basis of the following exemptions under the Act:

- law enforcement - sections 8(1)(a) and (b);
- right to fair trial - section 8(1)(f);
- security - section 8(1)(i);
- invasion of privacy - section 14(1)(f).

The appellant appealed the denial of access.

During mediation, the appellant reaffirmed that, apart from a response to the second part of part seven of the request, he was not seeking information such as witness statements and other interviews, but rather, information relating to the technical aspects of the incident.

He also agreed that information originating from the Ministry of the Solicitor General and Correctional Services fell under a second request which he made to that institution and was, therefore, not at issue in the current appeal.

Finally, the appellant agreed to accept the mediator's identification of the parts of the records which relate generally to topics of a technical nature.

This office provided a Notice of Inquiry to the appellant and the Police. Representations were received from the Police.

RECORDS:

Only 15 pages of records (as identified by the mediator) remain at issue in this appeal. They consist of supplementary occurrence reports and comprise pages 0049, 0050, 0051, 0161, 0176, 0177, 0178, 0179, 0180, 0193, 0213, 0238, 0239, 0275, 0303. The Police claim that sections 8(1)(a), (b) and (f) apply to all of these pages, that section 14(1)(f) applies to all of them except page 0303, and that section 8(1)(i) applies to pages 0049 and 0050.

DISCUSSION:

LAW ENFORCEMENT

Sections 8(1)(a) and (b) read as follows:

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.

The purpose of these exemptions is to provide the Police with discretion to deny access to records in circumstances where disclosure 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 a law enforcement matter or investigation is ongoing, and that disclosure of the records could reasonably be expected to interfere with the matter or investigation.

For a record to qualify for exemption under either of these two sections, the matter or investigation with which the disclosure could interfere must first satisfy the definition of "law enforcement", which is a term found in section 2(1) of the Act.

This section defines “law enforcement” to mean (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).

I am satisfied that, in investigating the bombing of an abortion clinic, the Police were engaged in “law enforcement” activities, as defined in section 2(1) of the Act.

The Police submit that the records relate to an active, ongoing investigation into the fire-bombing of a controversial medical clinic. Moreover, the Police state that this matter forms part of a larger joint police effort in investigating crimes against other abortion clinics and physicians. The Police refer to recent anti-abortion activities that have been directed towards abortion clinics and physicians which have resulted in serious injury and death, and point to the “potentially lethal” ramifications of premature disclosure of the records relating to the overall investigation in this context.

The Police express the concern that premature disclosure of the information concerning the current investigation could, either intentionally or inadvertently, cause an obstruction of justice insofar as it could reasonably be expected to tip an involved party or suspect as to the direction of the investigation, provide an opportunity for individuals involved to tamper with evidence which the police may uncover at a later time and effectively cover their tracks and evade charges.

The records relate to an event which occurred approximately eight years ago. However, based on the representations and my review of the records, I am satisfied that they contain information which relates to an ongoing law enforcement investigation and/or matter, and that disclosure of this information could reasonably be expected to interfere with the investigation and/or matter. Therefore, I find that the records are properly exempt under sections 8(1)(a) and (b) of the Act.

Because of the findings I have made, it is not necessary for me to consider the possible application of sections 8(1)(f), (i) or 14(1)(f) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley

December 4, 1998

Adjudicator