

ORDER MO-1680

Appeal MA-020219-1

Toronto Police Services Board

NATURE OF THE APPEAL:

The requester made a request to the Toronto Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to copies of all records relating to a complaint he made to the Police about a possible fraud involving a named individual (the affected person).

The Police identified 32 pages of responsive records and issued a decision letter to the requester granting access to some of the records, either in whole or in part. The Police denied access to the remaining records (or parts thereof), which consist of occurrence reports, CPIC printouts, a letter, the back of a cheque and entries in two police officers' notebooks. The Police claimed that these records qualified for exemption under the following provisions of the *Act*:

- section 38(a) (discretion to refuse requester's own information) in conjunction with sections 8(1)(l) (facilitate commission of an unlawful act) and 11(d) (economic and other interests); and
- section 38(b) (invasion of privacy) with specific reference to section 14(3)(b) (compiled and identifiable as part of an investigation into a possible violation of law).

In their decision letter, the Police also indicated that they were denying access to certain portions of the police officers' notebooks on the basis that they were not responsive to the request.

The requester (now the appellant) appealed the Police's decision to deny access.

The appellant clarified that he was seeking a review of the Police's exemption claims, but was not appealing the Police's decision that portions of the records were non-responsive.

Mediation did not resolve this appeal, and the file was transferred to adjudication. This office sent a Notice of Inquiry to the Police, initially, outlining the facts and issues and inviting the Police to make written representations. The Police submitted representations in response. This office then sent a Notice of Inquiry to the appellant, together with a copy of the non-confidential portions of the Police's representations. The appellant did not make any representations or otherwise respond to the Notice.

In this appeal I must decide whether the exemptions claimed by the Police apply to the records.

RECORDS:

The following records remain at issue, in whole or in part:

- Record 1 - General Occurrence Report (pages 1–2)
- Record 2 - CPIC printout (pages 3–4)
- Record 3 - Letter dated March 29, 2000 (page 9)
- Record 4 - Back of a cheque (page 13)
- Record 5 - Occurrence Report (pages 18-19)

- Record 6 - Police officer's notes (pages 20-23)
- Record 7 - Police officer's notes (pages 24-32)

All page references correspond to the Police's numbering system.

BRIEF CONCLUSION:

For the reasons set out in this order, I find that some of the information at issue is exempt from disclosure, while the remaining information is not and must be disclosed.

DISCUSSION:

PERSONAL INFORMATION

The first issue I must decide is whether the records contain personal information, and if so, whose. This initial finding will determine whether I must review the Police's denial of access to personal information in each record under section 38(b) (a discretionary exemption) or section 14 (a mandatory one). It will also determine whether I review the Police's "law enforcement" claim under section 8(1)(l) alone or in conjunction with section 38(a).

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 if 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 (section 2(1)(h)).

The Police submit:

The majority of exempted information in this file refers to a specific person; however, the records also contain the names, addresses and personal information of other identified individuals, detailing each person's involvement in a law enforcement matter.

I have reviewed the records and I make the following findings:

- Records 1, 3 and 5 contain the personal information of the appellant, the affected person and another individual. The information relating to this latter individual consists of his name and job title, which ordinarily would constitute professional, rather than personal, information. Because of the sensitive nature of the records and their context, however, I find that this information qualifies as personal information. Record 3 is a typed letter that also contains a handwritten note. The Police do not provide any representations for Record 3 or identify who wrote the note. On its face, the note does not appear to contain personal information, and I find that it does not contain any.

- Records 2, 6 and 7 contain the personal information of the affected person and other individuals.
- Record 4 does not contain any personal information.

LAW ENFORCEMENT

The Police claim that an “ORI number” in Record 2 (page 4) is exempt under section 38(a) in conjunction with section 8(1)(l). Because I have found that Record 2 does not contain the appellant’s personal information, however, I must review the Police’s decision to deny access to the ORI number under section 8(1)(l) alone, rather than in conjunction with section 38(a).

Section 8(1)(l) reads:

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.

Because section 8(1)(l) is a discretionary exemption, even if the information falls within the scope of this section, the institution must nevertheless consider whether to disclose the information to the requester.

“ORI numbers” are also known as “CPIC access codes.” The Police submit that the ORI number “refers to the query format used to access the information stored in the Canadian Police Information Centre (CPIC) system.” According to the CPIC Reference Manual, each terminal for accessing the CPIC system is identified by a unique ORI number. The Police further submit that:

Should an individual obtain access to [the CPIC] database, the quality and effectiveness of this police support system could be detrimentally affected. Police agencies routinely act upon the information received from CPIC; and should the database be compromised by the altering of information contained therein, the ability of the police to function and perform their duties would be severely affected.

Previous orders of this office have found ORI numbers to qualify for exemption under section 8(1)(l) (for example, Orders M-933, MO-1335, MO-1428). In Order MO-1335, Senior Adjudicator David Goodis stated that “Where information could be used by any individual to gain unauthorized access to the CPIC database, an important law enforcement tool, it should be considered exempt under section 8(1)(l).” In keeping with these previous orders, I find that the ORI number in Record 2 (page 4) qualifies for exemption under section 8(1)(l) because its disclosure could reasonably be expected to facilitate the commission of an unlawful act.

I am also satisfied, based on the Police's representations, that the Police have properly exercised their discretion in denying access to this information.

INVASION OF PRIVACY

The Police rely on section 38(b) of the *Act* in conjunction with section 14 to support their denial of access to Records 1, 2, 3, 5, 6 and 7. More specifically, the Police rely on the "presumed unjustified invasion of personal privacy" at section 14(3)(b). These sections read:

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

(b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

14 (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) 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;

Because I have found that Records 1, 3 and 5 contain personal information of the appellant and other individuals, I must determine whether these records qualify for exemption under section 38(b) of the *Act*.

By the same token, since I have found that Records 2, 6 and 7 contain the personal information of the affected person and other individuals, but not of the appellant, I must review whether these records are exempt under section 14.

Discretionary exemption at section 38(b)

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from disclosure that limit this general right.

Under section 38(b), where a record relates to the requester but disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution may refuse to disclose that information to the requester.

Sections 14(1) through (4) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of an individual's personal privacy under section 38(b). Sections 14(1)(a) through (e) provide exceptions to the personal privacy exemption; if any of these exceptions apply, the information cannot be exempt from disclosure under section 38(b).

Section 14(2) provides some criteria for determining whether the personal privacy exemption applies. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the “compelling public interest” override at section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

If none of the presumptions in section 14(3) applies, the institution must consider the factors listed in section 14(2), as well as all other relevant circumstances.

I would note at the outset that based on my review of the records, I have concluded that none of the exceptions at sections 14(1)(a) through (e) applies in this case.

Records 1, 3 and 5

Record 1 consists of a page entitled “General Occurrence” and another entitled “Supplementary Report.” Record 5 is a two-page document entitled “Occurrence.” The Police submit that they created the occurrence reports in this case for the purpose of investigating a complaint of criminal activity. The Police have already disclosed most of Records 1 and 5 to the appellant and have withheld only small portions of these records relating to individuals other than the appellant.

Record 3 is a letter dated March 29, 2000 addressed to the appellant. The Police have disclosed most of this record to the appellant, but have denied access to the name and signature of the letter’s author, the name of an individual who received a “carbon copy” of the letter, and a handwritten note. Because I have already found that the handwritten note does not contain “personal information,” it does not qualify for exemption under section 38(b). As this note is not otherwise exempt under any other provisions of the *Act*, I will order the Police to disclose it. As noted earlier, the Police do not specifically refer to this letter in their representations.

The purpose of section 38(b) is to protect the personal privacy of individuals other than the requester (here, the appellant). In Records 1 and 5, the Police have denied the appellant access to the personal information of the affected person and another individual, including their name and other descriptive information. It is apparent from the records and the surrounding circumstances that the appellant himself provided much of this information to the Police when he made his complaint. Consequently, in these circumstances, the affected person and the other individual have no privacy interest in this information vis-à-vis the appellant that needs protecting.

Similarly, in Record 3, it simply does not make sense to deny the appellant access to the name and signature of the letter's author, or the name of the individual who received a "carbon copy," when the letter was addressed to the appellant in the first place.

Withholding information in Records 1, 3 and 5 that was supplied to or by the appellant would not serve the purpose of section 38(b). In the language of previous orders, doing so would produce an "absurd result" (for example, Orders M-444, MO-1561). This conclusion makes it unnecessary to undertake an invasion-of-privacy analysis under section 38(b) for this information.

I do, however, agree with the Police's decision to withhold information in Records 1 and 5 that the appellant clearly did not provide. My finding that the appellant is not already privy to these specific portions of the records turns on the dates of the entries and their content. I find that this information was compiled and is identifiable as part of an investigation into a possible violation of law, thereby triggering the presumption of an unjustified invasion of the affected person's privacy at section 14(3)(b). The presumption is not rebutted by section 14(4) or the "public interest override" at section 16, which was not raised in this case. This information is therefore exempt under section 38(b). In addition, I am satisfied that the Police did not err in exercising their discretion to withhold this information.

I am enclosing with the copy of this order being sent to the Police a copy of Records 1 and 5 highlighting those portions that the Police must not disclose. I will order the Police to disclose the remaining information in Records 1 and 5, and Record 3 in its entirety.

Mandatory exemption at section 14

Unlike section 38(b), section 14 is a mandatory exemption. If the personal information qualifies for exemption based on the section 14 analysis described above, the institution must refuse to disclose it.

Records 2, 6 and 7

Record 2 (pages 3 and 4) consists of two pages of CPIC printouts. I have already found that the ORI number on page 4 is exempt under section 8(1)(l), and I will now address the remaining information.

Record 6 (pages 20-23) and Record 7 (pages 24-32) are entries from two police officers' notebooks, and the responsive portions remain at issue.

Among other things, the Police submit that the notebook entries were created "for the purpose of investigating a complaint of criminal activity made to the Police." The Police also make certain confidential representations for Records 2, 6 and 7 that I am not at liberty to disclose in this order.

I am satisfied that Records 2, 6 and 7 were compiled and are identifiable as part of an investigation into a possible violation of law, and that their disclosure is thus presumed to constitute an unjustified invasion of personal privacy under section 14(3)(b). Again, the presumption is not rebutted by section 14(4) or the “public interest override” at section 16. The information at issue in Records 2, 6 and 7 is therefore exempt under section 14 and it must not be disclosed.

ECONOMIC AND OTHER INTERESTS

The only remaining record is Record 4 (page 13), which is a photocopy of the back of a cheque. The only information at issue on this page is a corporate bank account number associated with the affected person’s business. The only exemption the Police have claimed for this information is section 11(d), which reads:

A head may refuse to disclose a record that contains,

information whose disclosure could reasonably be expected to be
injurious to the financial interests of an institution;

The Police submit:

Information concerning bank account numbers is now, and has always been, carefully protected by financial institutions. However, given the current, somewhat fallible, status of computerized banking, there is an even greater imperative to safeguard such information.

.
It is reasonably foreseeable that someone having access to such information could cause financial injury to another person.

The purpose of section 11 is to protect certain economic interests of institutions under the *Act*. For section 11(d) to apply, the Police must demonstrate a reasonable expectation of injury to their own financial interests. The Police’s representations, however, demonstrate that they are seeking to prevent financial injury to “another person.” I find that the information at issue does not qualify for exemption under section 11(d).

THIRD PARTY INFORMATION

The Police have not claimed any other exemptions for the corporate bank account number in Record 4 (page 13). I have an independent duty, however, to determine whether any of the mandatory exemptions in the *Act* might apply. In this case, I have concluded that the account number is exempt under the mandatory exemption for third party information at section 10(1)(c). This section reads:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in

confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

result in undue loss or gain to any person, group, committee or financial institution or agency; ...

I am satisfied that the account number qualifies as “financial information.” Previous orders have defined “financial information” as information relating to money and its use or distribution that contains or refers to specific data, or more broadly as “information pertaining to finance or money matters” (for example, Order P-1629). The account number in question clearly relates to finance or money matters, and while it does not contain specific data, it could reasonably be expected to reveal specific data by enabling someone to find out the balance in the account, for example.

Secondly, I am satisfied that the account number was supplied in confidence to the Police. As part of my inquiry, I asked the Police to indicate who provided them with Record 4. The Police advised me that they obtained this record from the affected person. Given the circumstances and the nature of the Police’s involvement in this case, I am prepared to infer that the affected person had a reasonable expectation that the account number would be kept confidential.

I now turn to the third part of the test, namely, whether disclosure of the account number could reasonably be expected to result in undue loss or gain as set out in section 10(1)(c). The Police’s representations, while made under section 11(d), are in effect directed at protecting against this type of harm.

In Order P-1095, Adjudicator Laurel Cropley found that an organization’s banking information was not exempt under the provincial counterpart to section 10 of the *Act*. She found that the institution and the affected parties in that case had not provided enough detailed evidence to satisfy the third part of the test in the particular circumstances of that appeal.

The circumstances in the appeal before me, however, distinguish this appeal from the one in Order P-1095. The allegations of fraud render the corporate bank account number in Record 4 more sensitive, and heighten the need to protect it. I find that disclosure of this account number could reasonably be expected to result in the harms set out in section 10(1)(c), and that the account number must not be disclosed. My finding in this regard is based upon the specific facts of this appeal.

ORDER:

1. I order the Police to disclose Records 1 (pages 1-2) and 5 (pages 18-19), except for those portions that I found to be exempt under section 38(b), and Record 3 (page 9) in its entirety, by **September 22, 2003**. I am attaching highlighted versions of Records 1 and 5 with the copy of this order being sent to the Police, identifying the portions that they must not disclose.

2. I uphold the Police's decision to deny access to the information at issue in Records 2 (pages 3-4), 4 (page 13), 6 (pages 20-23) and 7 (pages 24-32).
3. In order to verify compliance with the terms of Provision 1, I reserve the right to require the Police to provide me with a copy of the records that are disclosed to the appellant, upon request.

Original Signed By: _____

Shirley Senoff
Adjudicator

_____ August 29, 2003