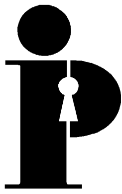

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2357

Appeal MA07-360

Ottawa Police Services Board

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NATURE OF THE APPEAL:

The Ottawa Police Services Board (the Police) received two requests from a media requester under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for:

> 1. …records of all occurrences of Ottawa police officer taser use from June 1, 2000 to the date that this request is resolved.
>
> > My request includes but is not be limited to: Date, time, location, sex and age of suspect, circumstances and incident details, whether suspect is armed, reason taser was deployed, method of tasering (fired barbs or direct contact), number of times suspect [was] tasered, whether shots failed or succeeded, injuries or deaths sustained during or after the taser was used, whether or not charges were laid in connection with the incident (if so, my request includes the charges and the suspect's name).
> >
> > I would also request any other pertinent information recorded in officer reports (excluding personal information).
>
> 2. …copies of all reviews of taser use by the Ottawa Police Service between June 2000 and the date that this request is resolved.
>
> > My request includes, but is not limited to: Records of reviews made after taser use in an incident and annual reports or periodic reviews or studies of the taser program.

The Police responded to the first request advising that they do not keep statistics for the use of tasers. The Police further advised that occurrence reports containing information regarding the use of tasers cannot be retrieved "because we do not have the option to query our Records System with that search parameter."

The Police responded to the second request advising that the only statistical records collected regarding the use of tasers are collected by their Professional Development Section and are forwarded to the Ministry of Community Safety and Correctional Services, which are completed and sent to the Ministry when required. The requester was advised that the Police do not keep records or statistics on the use of the tasers. The Police further indicated that the requester may want to contact the Ministry to obtain statistical information in regards to use of tasers.

The Police later located a responsive record and issued a revised decision relating to both requests. In that letter, the Police advised that, contrary to their earlier letters, they do keep statistics regarding tasers. The letter sets out information relating to taser use for the years 2000 to 2006. The Police indicate that, as of the date of their decision, they did not have statistics available for the year 2007.

In addition, the Police advised:

> The only statistical records for use of the tasers are submitted by our Tactical Team. The status reports are provided to the Professional Development Section and are used for study purposes only. These forms are submitted to the Professional Development Section, they are reviewed, analyzed and are maintained without personal information in order to collect the data necessary for the study that is provided to the Director General yearly. This study is used to determine if the tasers are beneficial as a less lethal weapon.
>
> A summary of each Use of Force taser incident is reported to the Police Services Board during an "in-camera" meeting.

The Police went on to advise that access to these responsive records is not being granted pursuant to sections 6(1)(b) (closed meeting) and 14(1) (personal privacy) of the *Act*.

The Police further advised that, as they do not have the ability to identify each police report when the taser is used, they cannot provide the requester with information for each report when a subject is apprehended by use of the taser.

The requester (now the appellant) appealed this revised decision of the Police. In addition to appealing the application of the exemptions claimed under the *Act*, the appellant also advised that he believes additional records responsive to his request exist. Therefore, the reasonableness of the Police's search for records is an issue in this appeal.

During the course of mediation, the appellant raised the issue of a public interest in the release of the record. As a result, section 16 of the *Act* has been added as an issue in this appeal.

The parties were unable to resolve the issues under appeal through the process of mediation. The file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the Police initially, seeking their representations. The Police provided representations. I sent a complete copy of the Police's representations to the appellant, along with a Notice of Inquiry. I received representations from the appellant in response. I sent a copy of the appellant's representations to the Police and sought reply representations from them. The Police did not provide reply representations. However, the Police did provide the appellant with access to additional responsive records in response to the appellant's representations concerning the availability of such records. Based on this additional disclosure of records, I sought representations from the appellant on the records and issues that remained outstanding. The appellant advised that he was not seeking access to the severed portions of the additional records disclosed by the Police, but was still seeking access to the remaining records responsive to his requests and that additional responsive records should exist.

I then sought reply representations from the Police in response to the appellant's representations on the Police's additional disclosure. The Police did not provide reply representations.

RECORDS:

In their representations, the Police identified the following records as responsive to the request:

> A report that was presented to the Police Services Board (the Police) on January 22, 2001 by Chief [name] (the Chief) and was done on a monthly basis until June 2002. These reports were provided during the Pilot Project using the Conducted Energy Devices (tasers) by Ottawa Police in response to a study by the Ministry of Community Safety and Correctional Services [the Ministry].

The Police provided a copy of these records to me, which are more particularly described in the Index below. In addition, the Police provided me with a copy of the Confidential Agenda and Minutes from the January 29, 2001 in-camera meeting. Written on the back page of the report presented at this meeting (Record #1) were handwritten notes. Based on my review of the records, the aforementioned minutes and agenda, I find that these notes are not responsive to the appellant's request and I will not be considering these notes in this order.

Index of Records

Record #	Description of Record
1	A Report to the Executive Director of the Police from the Chief dated January 22, 2001 attaching a 19 page interim report on the pilot project dated January 22, 2001
2	A Report to the Executive Director of the Police from the Chief dated September 18, 2001 attaching a two page report on the pilot project dated September 2001
3	A Report to the Executive Director of the Police from the Chief dated January 22, 2002 attaching a one page report on the pilot project dated January 2002
4	A Report to the Executive Director of the Police from the Chief dated February 19, 2002 attaching a one page report on the pilot project dated February 2002
5	A Report to the Executive Director of the Police from the Chief dated March 19, 2002 attaching a one page report on the pilot project dated March 2002
6	A Report to the Executive Director of the Police from the Chief dated April 16, 2002 attaching a one page report on the pilot project dated April 2002
7	A Report to the Executive Director of the Police from the Chief dated May 21, 2002 attaching a one page report on the pilot project dated May 2002
8	A Report to the Executive Director of the Police from the Chief dated June 18, 2002 attaching a one page report on the pilot project dated June 2002
9	A two page Report to the Police dated July 2002

DISCUSSION:

CLOSED MEETING

I will first determine whether the discretionary exemption at section 6(1)(b) applies to the records.

Section 6(1)(b) reads:

> A head may refuse to disclose a record,
>
> > that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

For this exemption to apply, the institution must establish that

1. a council, board, commission or other body, or a committee of one of them, held a meeting

2. a statute authorizes the holding of the meeting in the absence of the public, and

3. disclosure of the record would reveal the actual substance of the deliberations of the meeting

[Orders M-64, M-102, MO-1248]

Under Part 3 of the test

- "deliberations" refer to discussions conducted with a view towards making a decision [Order M-184]

- "substance" generally means more than just the subject of the meeting [Orders M-703, MO-1344]

Section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting. For example, it has been found not to apply to the names of individuals attending meetings, and the dates, times and locations of meetings [Order MO-1344].

The Police submit that:

> The Ottawa Police Service was one of several police agencies in Ontario chosen by the Ministry to introduce lasers as a potential use of force option…
>
> The use of tasers throughout the Province of Ontario was very largely dependant on the outcome with Ottawa Police and to ensure total impartiality it was imperative that this information not be made public. It was the hope of the Ottawa Police Service during the pilot project that a fair and unbiased decision would be made by the officers and individuals that were the subject of this project.
>
> Monthly meetings are held with the Police Services Board. The Ottawa Police Services Board serves as a link between the community and the Ottawa Police Service, monitors and evaluates the performance of the Chief of Police, and is responsible for setting policy, objectives and goals related to policing in the City. These meetings are publicly held at City Hall and are attended by the Board members and members of the Police Executive team…
>
> The Board members and the Police Executive then move to a private office where the "in-camera" portion of the meeting is held in private. This is where the deliberations are conducted that cover the confidential business of the Board and the management of the Police Service.

In response, the appellant submits that:

> The reports were not presented as part of deliberations that were conducted with a view towards making a decision; the decision whether to allow taser use by police services in the province as a result of the Ottawa pilot project was the Ontario government's to make through deliberations other than Ottawa Police Services Board meetings.

In later representations, the Police state that:

> [The] report that was submitted in January 2001 during a pilot project by the Ministry of Community Safety and Correctional Services and the Ottawa Police Services for the use of tasers also names Conducted Energy Devices… outlines the use and results of the tasers during a Pilot Project in the Province of Ontario. This study was accepted by the Police Services Board and it was agreed in June 2000 that a report would be prepared and submitted to the Board after the first six months of the Project. This report dated January 2001 was submitted to the Board while "in-camera" and was not disclosed to the appellant under exemption section 6(1)(b) [of the *Act*]…

> These reports were to be submitted to the Board every month but the reporting did not occur. The next report was outlined to the Board in the memo of January 2007.

In accordance with this three part test, I will now determine whether the records qualify for exemption under this section.

Part 1- a council, board, commission or other body, or a committee of one of them, held a meeting in the absence of the public

The Police submit that only Record #1 was submitted to an in-camera meeting of the Board which occurred on January 29, 2001. Based on the Police's representations, I accept that a closed meeting of the Board took place where the Police discussed the substance of Record #1. Therefore, I find that the Police have satisfied the first requirement of section 6(1)(b) with respect to Record #1 only.

As Record #'s 2 to 9 were not submitted for consideration at an in-camera meeting, section 6(1)(b) does not apply to these records.

Part 2 - a statute authorizes the holding of the meeting in the absence of the public

The Police rely on section 35(4)(b) of the *Police Services Act* (the *PSA*) which provides that:

> The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,
>
>> intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

Based on the Police's representations, I am satisfied that an in-camera meeting was properly authorized under section 35(4)(b) of the *PSA* to consider Record #1. This record contains intimate personal matters which were desirable to be considered in-camera in the interest of any person affected by the use of tasers. The Police state in their representations that:

> These reports indicated the particulars of the incidents when the tasers were used during [the] pilot project. The Police Services Board was privy to the information and deliberations were undertaken at that time "in-camera" so frank discussions could take place about the safety, effectiveness and whether or not the tasers were a more humane way to apprehend individuals. It was paramount that the information of the individuals and incidents involving tasers was kept confidential…

> If the information regarding the pilot project was widely published, it would have been difficult, if not impossible to make a decision on the effectiveness of the taser program. If the subjects who had been tasered were contacted by the media or other lobbyists, the decision to implement the tasers for Province wide use could have been compromised because of their biased role in these incidents.

Therefore, I find that the second requirement of section 6(1)(b) has been met with respect to Record #1.

Part 3 - disclosure of the record would reveal the actual substance of the deliberations of the meeting

Under part 3 of the test it must be shown that disclosure of the record would reveal the actual substance of the deliberations of the meeting. As noted above, "deliberations" refer to discussions conducted with a view towards making a decision and "substance" generally means more than just the subject of the meeting.

Previous orders of this office have also established that it is not sufficient that the record itself was the subject of deliberations at the meeting in question [see Order M-98, M-208], where the record does not reveal the actual substance of the deliberations or discussions that took place leading up to the decisions that were made.

Former Assistant Commissioner Tom Mitchinson addressed the application of part 3 of the test in section 6(1)(b) to the minutes of a closed meeting held by a school board in Order MO-1344. He stated:

> To satisfy the third requirement of the test, the Board must establish that disclosure of the record would reveal the actual substance of the deliberations of this in-camera meeting. As I found in Order M-98, the third requirement would not be satisfied if the disclosure would merely reveal the subject of the deliberations and not their substance (see also Order M-703). "Deliberations" in the context of section 6(1)(b) means discussions which have been conducted with a view to making a decision (Orders M-184, M-196 and M-385).

In Order M-1169, former Assistant Commissioner Mitchinson considered the application of section 6(1)(b) to handwritten notes and minutes of an in-camera meeting where fully executed Minutes of Settlement relating to a complaint against the Chief of Police under the Ontario Human Rights Code were reviewed. The former Assistant Commissioner stated:

> In my view, these two records deal with the subject of the human rights complaint and the outcome of the mediation exercise, but not the substance of any deliberations about this matter. The terms of settlement were simply reported to the Board at the …meeting. The Board did not, and it would appear did not have authority to, discuss these terms with a view to approving or making a decision

> about them. Therefore, I find that the third requirement has not been established for these two records, and that they do not qualify for exemption under section 6(1)(b).

I adopt the same approach in this appeal. Record #1 is an interim report and covering memorandum. The report was sent to the Ministry at the conclusion of a six month study by the Ottawa Police on the use of tasers by its officers. Based on my review of this record, as well as the agenda and minutes of the in-camera meeting where this record was discussed, I find that this record was not presented as part of deliberations that were conducted with a view towards making a decision. I agree with the appellant that the decision as to whether to allow taser use by police services in Ontario as a result of the pilot project was the Ontario government's to make. Decisions or deliberations by the Police on this record were not required.

While I accept that disclosure of this record might reveal the subject of discussions at the in-camera meeting, I do not accept that disclosure of this record would reveal discussions conducted with a view towards making a decision that might have been taken.

Accordingly, I find that Record #1 does not meet part 3 of the test and, therefore, does not qualify for exemption under section 6(1)(b).

Having found that none of the records satisfy the test for the application of section 6(1)(b), it is not necessary to consider the application of the exception in section 6(2)(b) of the *Act*.

PERSONAL INFORMATION

I will now consider whether the records contain "personal information" as defined in section 2(1) and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Effective April 1, 2007, the *Act* was amended by adding sections 2(3) and 2(4). These amendments apply only to appeals involving requests that were received by institutions after that date. Section 2(3) modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity". Section 2(4) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1).

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Police submit that:

> Some information contained in the report that was presented to the Police Services Board is the information of the individuals involved in the incidents where the tasers were used. This information contains, their police report number, their approximate age and the sex of the individual. In some cases even specific addresses were mentioned. There are also summaries of the events that initiated the use of the taser.

The appellant did not address this issue directly in his representations.

Analysis/Findings

Based on my review of the records, I find that certain portions contain personal information. This personal information includes identifying numbers, home addresses, sex, ages and criminal and medical histories. It is reasonable to expect that individuals may be identified if this information is disclosed.

I find that once the personal information is removed from the records, the remaining information does not qualify as personal information. As section 14(1) does not apply to this information, the remaining information is not exempt from disclosure and should be released to the appellant.

PERSONAL PRIVACY

I will now determine whether the mandatory exemption at section 14(1) applies to the personal information at issue.

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14.

In the circumstances, it appears that the only exception that could apply is section 14(1)(f). This section reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
>> if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1).

If section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. Section 14(4) does not apply.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. Section 14(3) does not apply.

If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

The Police submit that:

> If publicity was afforded to each incident where the tasers were used, the individual's identity and personal information could have been compromised. The type of incidents where the tasers were used could vary from criminal activity to mental health issues, and it is not the intent of this Police Service to publish or divulge these incidents to the degree where the subjects could be identified or related to particular criminal activity.

The appellant did not address this issue directly, other than submitting that this type of information is routinely disclosed or that the public interest override in section 16 of the *Act* should apply to allow disclosure of this information.

Analysis/Findings

The records that contain personal information all concern incidents where tasers were used to subdue an individual during a specific situation. Although individual names, other than police officer names, are not contained in the records, disclosure of the home addresses in the records, along with the other information therein, could allow individuals to be identified.

As the appellant has not addressed the factors or presumptions set out in sections 14(2) and (3), accordingly, I find that there is insufficient evidence on which to conclude that disclosure of the personal information in the records would not constitute an unjustified invasion of personal privacy. Therefore, I find that the personal information in the records is exempt under section 14(1) of the *Act*.

PUBLIC INTEREST OVERRIDE

I will now determine whether there a compelling public interest in disclosure of the personal information in the records that clearly outweighs the purpose of the section 14(1) exemption.

Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

A public interest is not automatically established where the requester is a member of the media [Orders M-773, M-1074].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)]

- the integrity of the criminal justice system has been called into question [Order P-1779]

- public safety issues relating to the operation of nuclear facilities have been raised [Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805]

- disclosure would shed light on the safe operation of petrochemical facilities [Order P-1175] or the province's ability to prepare for a nuclear emergency [Order P-901]

- the records contain information about contributions to municipal election campaigns [*Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773]

A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391, M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

The Police submit that:

> The pilot project for the tasers was not widely used throughout our organization and was very limited in the number of times it was used. The taser, being a new tool for our organization …was tested by a selected team of officers. In many instances over the course of the years of use, it was often used as a tool to apprehend or subdue individuals. It is the opinion of this service that the taser was used periodically with such favorable results, and had not become an issue by the individuals and did not require publicity to support the cessation of its use.

The appellant submits that:

> …tasers have always been controversial devices that generate public discussion and interest. At the time that I submitted the request, substantial debate and interest in the issue had occurred during the seven years of use in Ottawa.
>
> The interest and debate increased when [name] died after he was tasered by RCMP officers in a Vancouver airport on [date].
>
> The Vancouver incident set off a national debate about the use of the taser. The aftermath of the incident has led to reviews of RCMP policy. It also caused increased attention to taser incidents that followed in Ottawa…
>
> The information I am requesting would shed light on the operations of the institution and government (in its decision to allow the implementation of tasers). It would also expand the information about when and how the tasers are actually being used and reviewed in order to add to the information the public has in order to express informed opinion on the issue.

Analysis/Findings

I accept the appellant's position that the subject matter of the records, which reviews the use of tasers by police officers, is a matter of compelling public interest. Improper use of tasers can result in serious adverse health and safety consequences to the members of the public being tasered. However, the existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the section 14(1) personal privacy exemption that I have found to apply to the personal information at issue in the records.

In Order PO-2054-I, former Assistant Commissioner Tom Mitchinson commented on the purpose of the mandatory exemption in section 21(1) of the provincial *Act* (the equivalent to section 14(1) in the *Act*):

> Section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is protected except where infringements of this interest are justified. The importance of this exemption, in the context of the *Act*, is underlined by its inclusion as one of the fundamental purposes of the *Act*, as stated in section 1(b):
>
> > The purposes of this Act are,
> >
> > > to protect the privacy of individuals with respect to personal information about themselves held by institutions ...

> On this basis, I would conclude that the protection of individual privacy reflects a very important public policy purpose which is recognized in the section 21 exemption. However, it is important to note that the balancing exercise within section 21(2), the class-based exclusion of information from the reach of section 21 set out in section 21(4), and the inclusion of section 21 as an exemption that can be overridden by section 23 [section 16 of the *Act*] all indicate that this public policy purpose must, at times, yield to more compelling interests in disclosure identified by the legislature (Order P-1779).
>
> Commenting generally on the personal privacy exemption under the freedom of information scheme, the authors of *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vols. 2 and 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) indicated that the legislation must take into account situations where there is an undeniably compelling interest in access, situations where there should be a balancing of privacy interests, and situations that would generally be regarded as particularly sensitive, in which case the information should be made the subject of a presumption of confidentiality. In this regard, the Williams Commission Report recommended that "[a]s the personal information subject to the request becomes more sensitive in nature . . . the effect of the proposed exemption is to tip the scale in favour of non-disclosure" (Order MO-1254).

I agree with former Assistant Commissioner Mitchinson's assessment of this issue, and must now consider whether the compelling public interest in disclosure outweighs the purpose of the section 14(1) exemption. Taking into account the details of the personal information at issue, I find that the privacy interests protected by the applicability of the section 14(1) exemption to the personal information in the records cannot be overcome in this case by the "public interest override" in section 16. Any compelling public interest in the disclosure of this personal information does not clearly outweigh the purpose of this established exemption. The records were created in response to specific incidents concerning the identifiable individuals in the records and contain personal information of a sensitive nature, including medical and criminal histories. Based upon the provisions of this order and on the other information already disclosed by the Police, significant amounts of information have, or will be, disclosed concerning the use of tasers by the Police. This disclosure is adequate to address any public interest considerations [Orders P-532, P-568].

SEARCH FOR RESPONSIVE RECORDS

I will now determine whether the Police conducted a reasonable search for records.

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried

out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The Police were asked to provide a written summary of all steps taken in response to the request. In particular, the Police were asked to respond to the following, preferably in affidavit form:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.

2. If the institution did not contact the requester to clarify the request, did it:

   (a) choose to respond literally to the request?

   (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?

3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.

4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

If the institution provides an affidavit it should be from the person or persons who conducted the actual search. It should be signed and sworn or affirmed before a person authorized to administer oaths or affirmations.

The Police submit that:

> The first request dealing with copies of the occurrence reports involving (Conducted Energy Device) tasers cannot be identified...
>
> Each police report is entered onto our Records Management System (RMS) and is coded or classified with a number specific to the type of incident. Each report, is entered with one or more codes. These codes can be used as search parameters and can identify reports entered on our RMS. A search for reports using the code or classification specified for Use of Force was done with negative results. [The] search was negative because the code used for all Use Of Force incidents, would not be coded as such because the use of tasers would only be a secondary code to an event…
>
> The police reports relating to the taser use are kept within the care and control of the Ottawa Police Records Department. The police reports that have hard copy reports are kept in the records branch and the electronic records would be in our records management database. If the police reports regarding tasers were filed separately, the search could be done manually but this is not the case. The reports that would have resulted in the use of tasers would be kept among all other police reports. Therefore this could not be used as a search option…
>
> The electronic database is not supported by the Information Technology Section of this Police service and the database cannot be searched for the taser use only.
>
> It was anticipated that an annual report from the Director General would be submitted to the Police Services Board. In fact, this was not the practice that was adopted by the Executive and there were only monthly updates submitted from the beginning of the pilot project until June 2002.

The appellant submits that:

> I believe I should be given complete copies of Part A of Use Of Force reports for each of the years of my request, because it pertains to the information I sought in my request regarding taser use. No exemptions have been claimed over these records. And as the service has stated, no personal information is contained on the form.
>
> Other records I believe may exist:
>
> 1) After an incident involving a taser, the police chief and others will often tell media that the incidents are reviewed. Among the records I am seeking are copies of such reviews carried out after such incidents. Perhaps an explanation of what

> is meant by these "reviews" referred to by the chief and others would be helpful in determining what records exist.
>
> 2) I also believe that a report or compilation of conclusions would have been passed on to the provincial government upon completion of the pilot project in Ottawa. Such a document would he included in the scope of my request for reports or reviews…

Subsequent to receipt of these representations, the Police provided the appellant with copies of the Use of Force taser reports from 2000 to March 2008. I then asked the appellant if he believed that any additional responsive records should still exist. In response, the appellant stated that:

> I have also had discussions with officers within the police service's Professional Development Centre and believe other records may be outstanding. I have been told that an additional form has been used since about October 2007 to provide further information about taser use.
>
> The additional report is usually stapled to or filed with the Use of Force report, I have been told.

Analysis/Findings

The *Act* does not require the Police to prove with absolute certainty that further records do not exist. However, the Police must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody or control [Order P-624].

In his final submission, the appellant states that he believes that additional records should exist, in particular a form in use by the Police since October 2007. However, as the appellant's requests were made in July 2007, a request for records that post date the request dates will have to be the subject of a new request.

I find that the appellant has not provided me with a reasonable basis for concluding that additional records exist responsive to the requests that are the subject of this appeal. Based on the Police's representations and their disclosure of records to the appellant made during the course of this inquiry, I find that the Police have provided sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records [Order P-624].

Accordingly, I find that the Police have performed a reasonable search for responsive records and I dismiss that aspect of the appeal.

ORDER:

1. I uphold the Police's decision not to disclose the personal information of identifiable individuals in the records. For ease of reference I have highlighted the portions of the records that should not be disclosed to the appellant on the copy of the records sent to the Police with this order.

2. I order the Police to disclose the remainder of the records to the appellant by **December 1, 2008.**

3. In order to verify compliance with provision 2 of this order, I reserve the right to require the Police to provide me with a copy of the records disclosed to the appellant.

4. I uphold the Police's search for responsive records and dismiss this part of the appeal.

______________________________ October 30, 2008

Diane Smith
Adjudicator