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

ORDER PO-2844

Appeal PA09-17-2

Ministry of Community Safety and Correctional Services

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NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received a request from a member of the media under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a search for two missing persons. The request stated:

> We are requesting information on a search the OPP conducted for two missing boys in our region. We have been told about 30 officers were involved in the effort, which required the use of a number of ATV's and a couple of helicopters.
>
> We would like to know when the search started and when it ended. We are interested in knowing how many officers were involved in the effort, and for how many hours. We are also interested [in knowing] how much, and what variety of equipment was mobilized to help with the search.
>
> Another issue we are interested in is the total cost the OPP incurred for conducting the search. A line item breakdown for specifics, like money spent on officer hours, meals, vehicle and helicopter costs would be appreciated.
>
> The boys names are [two named individuals] and they went missing from their [home] on [a specified date]. The police found them the next day.

The Ministry issued a decision disclosing the following information:

1. the date and time the incident in question was reported to the OPP and the date and time the search concluded;
2. the OPP staffing costs that were incurred relating to the incident; and
3. the OPP meal costs that were incurred relating to the incident.

The decision letter also stated:

> The OPP utilized 8-All Terrain Vehicles (ATVs), 1- Mobile Command Unit (MCU) and 1-OPP helicopter during the incident. A helicopter belonging to the federal government was also used during the incident. Specific costs cannot be isolated for the use of this equipment as the equipment involves an expense that is incurred in the normal day to day provision of policing services.

Access to the number of hours spent searching and the number of officers involved was denied pursuant to sections 14(1)(e), (i) and (l) of the *Act*.

The requester, now the appellant, appealed the decision of the Ministry to this office.

During mediation, the appellant stated that he wanted access to the number of officers involved in the search and the number of hours spent conducting the search. The appellant also took issue with the Ministry's decision regarding the costs for the use of the equipment. The appellant

argued that there is a compelling public interest in the disclosure of this information. As a result, section 23 was added as an issue in the appeal.

The Ministry advised the mediator that specific costs relating to equipment used during the search could not be identified as they are calculated on an annual basis only. In addition, the Ministry explained that the costs associated with the helicopter belonging to the federal government were not billed to the Ministry. The appellant accepted this explanation and confirmed to the mediator that he is not appealing the Ministry's decision on these issues.

Also during mediation, the Ministry issued a revised decision releasing the number of hours officers were involved in the search. As a result, the only information that remains at issue in this appeal is the number of officers involved in the search. No further mediation was possible and this file was moved to the inquiry stage of the appeal process.

I began my inquiry by issuing a Notice of Inquiry inviting the Ministry to submit representations on the facts and issues set out in the notice. I received representations from the Ministry. Following my review of the Ministry representations, I decided that no further representations were required.

RECORDS:

At issue in this appeal is the number of officers involved in a missing persons search that took place in August, 2008.

DISCUSSION:

LAW ENFORCEMENT

The Ministry claims that the information requested is exempt pursuant to sections 14(1)(e), (i) and (l). Section 14(1) states, in part:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to," the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

In the case of section 14(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a per se fulfillment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*, cited above].

The Ministry takes the position that disclosure could harm officer and public safety and law enforcement in general. The Ministry argues that if it were known how many officers conducted a search for missing persons, the information could be used for unlawful purposes. It provides the following two examples of how that might take place:

> Knowing how many police were deployed to search for the missing persons would provide would-be criminals with exact information as to the number of police officers, and therefore the percentage of the police service, that is not able to respond to other law enforcement matters when a search is taking place. In effect, this information would provide criminals with precise knowledge of local policing levels that might encourage them to either fraudulently report missing persons, or to engage in criminal behaviour during a missing persons search. This type of criminal behaviour could harm the public, police officers, and the buildings and systems that police officers protect.
>
> Those who cause mischief would have a greater incentive to do so, knowing the adverse impact that fraudulently reporting someone missing would have on local policing services. The OPP submits that it is self evident that the less people who engage in acts of mischief know what their actions cause, the less likely they are to engage in such mischief.

It also argues that the impact of disclosure would be greater in rural areas where there are fewer police officers since it would reveal more information about the remaining policing services. Additionally, the Ministry argues that the disclosure of this information, in the context of the other information that has already been disclosed to the appellant, will enable the appellant to develop a complete picture of what happens to policing resources during a search of this nature.

As already noted, in the case of section 14(1)(e), the Ministry must provide evidence to establish a reasonable basis for believing that endangerment to the life or physical safety of a law enforcement officer or any other person will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. In the case of sections 14(1)(i) and (l), the Ministry must provide detailed and convincing evidence to establish that disclosure could reasonably be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required (14(1)(i)) and facilitate the commission of an unlawful act or hamper the control of crime (14(1)(l)).

Having considered the representations of the Ministry and applying the approach taken to the application of sections 14(1)(e), (i) and (l) set out above, I am not persuaded by the Ministry's arguments that there exists a reasonable expectation of harm or a reasonable basis for believing that endangerment will result from disclosure of the number of officers that were involved in the missing persons search that took place in the fall of 2008.

In arriving at my decision, I have taken into account previous decisions of this office including the decision of former Assistant Commissioner Tom Mitchinson in Order PO-1944 [judicially reviewed in *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, [2002] O.J. No. 4703 (Div. Ct.) and remitted to the IPC on other grounds]. The request in that case was for information relating to the dates, destinations and expense forms of police officers assigned to protect the Premier while travelling over a specified period of time. The former Assistant Commissioner found that the disclosure of the expense claim forms of the officers deployed as part of the security detail would reveal the number of officers protecting the Premier. He also found that the disclosure of the number of officers assigned to the security detail would reasonably be expected to endanger the life or physical safety of the Premier and the officers. On that basis, the former Assistant Commissioner upheld the decision of the Ministry to withhold the expense claim forms as exempt under section 14(1)(e) (which, as noted, is also claimed in this appeal). These findings were affirmed by the former Assistant Commissioner in Order PO-2175-R which was issued following the reconsideration ordered by the Divisional Court in *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

I am satisfied that the findings of the former Assistant Commissioner in PO-1944, as affirmed in PO-2175-R, do not apply to the circumstances before me in this appeal. The evidence in that case was that the security detail was assigned to the Premier because there was a potential risk associated with the Premier's travel. It followed that if the Premier was at risk, then the officers assigned to his security detail would also be at risk. I agree with the former Assistant Commissioner's conclusion that the disclosure of information relating to the number of officers assigned to the protection of the Premier could reasonably be expected to endanger the life or

physical safety of the Premier and/or the law enforcement officers assigned to that duty. For those intent on harming the Premier, it would be helpful to have some knowledge of the size of his security detail. With respect to the historical nature of the information requested, in Order PO-2175-R former Assistant Commissioner Mitchinson stated:

> In my view, it is reasonable to assume that security arrangements for Premiers remain relatively consistent irrespective of incumbent office holder, and that disclosing the size of the security detail used by [the former Premier] during the time period covered by the appellant's request could reveal reasonably accurate information concerning security arrangements for the current Premier.

However, it does not follow that the disclosure of the number of officers assigned to conduct a search for missing persons would reasonably be expected to give rise to the same risk of harm. That type of information is not comparable in any way to the number of security personnel charged with actually accompanying and protecting a prominent public figure and, therefore, the consequences that might flow from the disclosure of the information at issue in Appeal PO-1944 are different than those that might result in this appeal. Indeed, in this appeal, I note that the Ministry does not specifically argue, nor is there evidence to support a finding that the life or physical safety of the officers or any other individuals involved in the search might be at risk as a result of the disclosure of this information. The examples of harm that might result from disclosure relied on by the Ministry involve the speculative risk that individuals might engage in *other* criminal activity as a result of knowing the number of officers that might be occupied in the search for missing persons. For all of these reasons, the findings made in Orders PO-1944 and PO-2175-R do not apply in the circumstances before me.

Turning to the arguments made by the Ministry in this appeal, I have concluded that information about resource allocations for this particular search reveals nothing significant about the resource allocations that may occur in a future search. The number of officers that will be allocated to a missing persons search will vary depending on the different circumstances of each case. Consequently, I find that the disclosure of information in this appeal reveals little information about how the police may respond to another missing persons case in the future.

In addition, there may be circumstances where the OPP relies on resources from other detachments, or on officers working overtime, to conduct searches. If that is the case, the disclosure of the number of officers involved in one search reveals nothing about the resources that remain available in any given area for other policing matters. Whether or not those circumstances existed in this missing persons search is not revealed by the information previously disclosed or by the disclosure of the information at issue in this appeal.

Nor am I persuaded by the Ministry's argument that disclosure of the number of officers will encourage or provide an incentive to those who want to do mischief to raise false alarms about missing persons in order to distract police resources. I note that there is often a significant amount of publicity that surrounds missing persons searches and, as a result, it is a matter of general knowledge that these searches often demand considerable policing resources. It follows that the disclosure of the number of officers involved in a specific search that occurred in the

past is not going to provide mischievious individuals with any greater incentive than they might otherwise have as a result of their general knowledge about searches of this kind.

I have considered the Ministry's argument that I must take into account the impact of disclosure in the context of the other information previously disclosed. However, I am not persuaded that, even in the context of this previously disclosed information, there exists a reasonable expectation of harm or a reasonable basis for believing that endangerment will result. Adding the number of officers involved in the search to information relating to the costs of meals, the time spent, and the equipment used to assist with the search does not in my view create a more "complete picture as to what happens to policing resources during a search for missing persons." While it does add additional detail, in my view it does not do so in a manner that elevates the risk to the level necessary to invoke sections 14(1)(e), (i) or (l).

Although I have taken into account the difficulty of predicting future events in law enforcement matters and the need to apply these exemptions in a sensitive manner, I find that the disclosure of this information will reveal little more than what is already a matter of general knowledge about the additional pressures on policing resources caused by a missing persons search. For all of these reasons, I find that the Ministry has not provided sufficient evidence to support the application of the exemptions in sections 14(1)(e), (i) or (l).

Given that I have found that the information at issue here is not exempt under the *Act* and should be disclosed, it is not necessary for me to review the Ministry's exercise of discretion. In addition, it is not necessary to consider the appellant's claim that the information should be disclosed pursuant to section 23.

ORDER:

I order the Ministry to disclose the information requested to the appellant by **December 17, 2009.**

Original signed by: November 12, 2009
Brian Beamish
Assistant Commissioner