

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-3842

Appeal MA18-487

Chatham-Kent Police Services Board

September 25, 2019

Summary: A requester sought access to the total number of firearms within the Chatham-Kent Police Service. The police denied access to a record containing this information on the basis of the law enforcement exemptions in section 8(1)(a), (e), (i), (j), and (l), and the danger to health or safety exemption at section 13 of the *Act*. In this order, the adjudicator finds that the exemptions do not apply. She orders the police to disclose the record to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c. M56, sections 8(1)(a), 8(1)(e), 8(1)(i), 8(1)(j), 8(1)(l), and 13.

OVERVIEW:

[1] The Chatham-Kent Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

[...] a list of all Chatham-Kent Police Services licence plates for vehicles and vin numbers. As well the name of the Chatham-Kent Police Union name and number. Also, the number of registered firearms licenced to the Chatham-Kent Police Service.

[2] The police contacted the requester to clarify the request, and confirmed that he was seeking access to the name and number of the police union, and "the total number of [firearms and police vehicles] within the Chatham-Kent Police Service."

[3] The police issued a decision granting access to information regarding the police

union, but it withheld records that would disclose the number of vehicles and firearms within the police service. The police denied access to these records under the law enforcement exemptions at sections 8(1)(a), (c), (e), (g), (i), (j), (k), and (l), and the danger to health or safety exemption at section 13 of the *Act*.

[4] The requester, now the appellant, appealed the police's decision.

[5] During the mediation stage of the appeal process, the appellant confirmed that he sought access to the police's total number of vehicles and firearms. The police maintained their position denying access to that information. The appellant advised the mediator that he wished to proceed to the adjudication stage of the appeal process

[6] The file was moved to the adjudication stage where an adjudicator may conduct an inquiry under the *Act*. During the inquiry, I sought and received representations from the police and appellant. The parties' submissions were shared in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*.

[7] In their representations, the police indicated that they no longer rely on the exemptions at section 8(1)(c), 8(1)(g) or 8(1)(k) to deny access. Also during my inquiry, the police issued a revised decision disclosing the total number of vehicles within the police service. As a result, the number of police vehicles and the exemptions in sections 8(1)(c), 8(1)(g) or 8(1)(k) are no longer at issue in this appeal. The police continued to withhold the number of firearms, relying on the exemptions at section 13 and sections 8(1)(a), (e), (i), (j), and (l).

[8] For the reasons that follow, I do not uphold the police's denial of access under sections 8 and 13, and I order them to disclose the record to the appellant.

RECORDS:

[9] There is a one-page record at issue, which indicates the total number of firearms within the Chatham-Kent Police Service.

ISSUES:

- A. Do any of the discretionary law enforcement exemptions at sections 8(1)(a), (e), (i), (j), and/or (l) apply to the record?
- B. Does the discretionary "danger to health or safety" exemption at section 13 apply to the record?

DISCUSSION:

Issue A: Do any of the discretionary law enforcement exemptions at sections 8(1)(a), (e), (i), (j), and/or (l) apply to the record?

[10] The police rely on the exemptions at sections 8(1)(a), (e), (i), (j), and/or (l) to deny access to the record at issue. The relevant parts of section 8(1) state:

1. A head may refuse to disclose a record if the disclosure could reasonably be expected to,
 - a. interfere with a law enforcement matter;
 - 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;
 - j. facilitate the escape from custody of a person who is under lawful detention;
 - l. facilitate the commission of an unlawful act or hamper the control of crime.

[11] The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) as follows:

"law enforcement" means,

- 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, or
- c. the conduct of proceedings referred to in clause (b)

[12] The term "law enforcement" has covered a variety of situations, including a municipality's investigation into a possible violation of a municipal by-law,¹ and a police

¹ Orders M-16 and MO-1245.

investigation into a possible violation of the *Criminal Code*.²

[13] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.³

[14] It is not enough, however, for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.⁴ The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.⁵

Representations

[15] In support of their reliance on the “law enforcement matter” exemption in section 8(1)(a), the police submit that there are a number of ongoing investigations involving firearms. The police maintain that disclosing the number of firearms that they have could interfere with or compromise those investigations. The police submit that, although certain information is made public in their annual reports,⁶ the number of firearms within the police service is not known to the public.

[16] With regard to the “endanger life of safety” exemption in section 8(1)(e), the police submit that disclosing the number of firearms they have could jeopardize officers’ safety, as well as the safety of the public. In support of this position, the police submit that officers interact with a “wide variety of activities and criminals” on a daily basis, and the potential that an officer will need to use his or her weapon is ongoing. The police explain that some officers are trained to handle one or more specialized weapons.

[17] As an example of risks considered under section 8(1)(e), the police submit that if “an officer or officers interact with multiple members of gangs, who would knowingly have knowledge of how many weapons there are, [the gang members] could overtake officers or their firearms.” The police submit that in addition to officers and civilians, the

² Orders M-202 and PO-2085.

³ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

⁴ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

⁵ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

⁶ For example, the 2017 Annual Report statistics indicate that the police responded to 29 “weapons calls,” and seized 18 “illegal guns and prohibited weapons.” Chatham-Kent Police Service Annual Reports are available online: <<http://www.ckpsannual.com/2015/index.html>>

life and safety of persons under arrest and in custody could also be put at risk.

[18] Regarding the exemption in section 8(1)(i), which contemplates the endangerment of security to a building, vehicle, system or procedure, the police submit that if the requested record is disclosed, it would "definitely endanger the security of a building." In support of this position, the police state:

Should gang members knowingly have in their possession more firearms than what the [police] are known to have, [they] could overtake the building, injure, kill, or hold hostage police officers, civilian staff and any prisoners in detention in jail cells.

[19] The police submit that they have a controlled entry, but the front lobby of the building is open to the public. They explain that if a person seeks to "venture further into the building," they would require proper authorization and authority to proceed. The police also advise that there is limited access to jail cells and certain other rooms in the building.

[20] The police also submit that disclosure of the number of firearms could endanger the security of police vehicles, which are equipped with "a minimal number of firearms." In support of this position, the police suggest that if officers are called to a gun or gang-related incident where weapons are present and in criminals' possession, then their officers and vehicles "would definitely be put in harms way."

[21] In addition to buildings and vehicles being put at risk, the police maintain that their systems could also be compromised as a result of the requested information being disclosed. In particular, the police refer to their policies and procedures that are intended to protect the security of buildings and vehicles.

[22] The police suggest that if the number of firearms is disclosed, then that information could help facilitate an individual's escape from custody as contemplated by section 8(1)(j). In support of this position, the police provide the following example:

Officers attend a disturbance call where there is a large gathering, (whether it be gang or assault with weapons related) and weapons are present. The officer places an accused under arrest. Persons in attendance could potentially interfere with the lawful detention of a prisoner and assist with the escape from lawful custody, since they have knowledge of [the] total number of firearms in [the police's possession.] The reasonable expectation of harm for the officer is extremely high. With large gatherings of persons involved in a disturbance, this has the potential and would be reasonably be expected [to put] the officer [...] in harms' way, should the officer be overpowered.

[23] In support of their reliance on the "facilitate commission of an unlawful act" exemption under section 8(1)(l), the police submit that their ability to control crime

could be hampered if the public is aware of the number of firearms that they have.

[24] In his representations, the appellant expresses his concern that the police are keeping “too many things secret.” He says that he is afraid for his life and safety, as the police have “more guns than officers.” The appellant maintains that he needs to know how many firearms the police have in order to feel safe. He confirms that he only seeks access to the number of firearms, and not the types of firearms or their registration numbers.

Analysis and Findings

[25] As mentioned above, the police are required to provide detailed evidence about the potential for the harms specified in sections 8(1)(a), (e), (i), (j) and (l). Establishing the exemptions in section 8 of the *Act* requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason.⁷ This requirement means that there must be some logical connection between disclosure of the record and the potential harm that the police seek to avoid by applying the exemption.⁸ The police must demonstrate a risk of harm that is well beyond the merely possible or speculative, although they need not prove that disclosure will in fact result in such harm.⁹

[26] Considering this standard, and based on my review of both the record and the police’s representations, I am not persuaded that the police have established that disclosing the total number of firearms that they have could reasonably be expected to result in any of the harms contemplated by the section 8(1)(a),(e), (i), (j) or (l) exemptions.

[27] To establish the exemption in section 8(1)(a), the police were required to provide sufficient evidence to satisfy me of an ongoing or existing *law enforcement matter*.¹⁰ This exemption does not apply where the matter is completed, or where the alleged interference is with “potential” law enforcement matters.¹¹ Although “matter” may extend beyond a specific investigation or proceeding,¹² the police have failed to provide the requisite evidence to establish the existence of any matter, and I find that section 8(1)(a) does not apply.

⁷ Orders PO-2099 and MO-2986.

⁸ Orders 188 and P-948.

⁹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

¹⁰ Order PO-2657.

¹¹ Orders PO-2085 and MO-1578.

¹² *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).

[28] In order to establish the exemption in section 8(1)(e), the police had to provide evidence demonstrating that disclosure of the record could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. The term "person" is not necessarily limited to a particular identifiable individual, and may include the members of an identifiable group or organization.¹³ While subjective fear is a potential consideration, it may not be enough to justify the exemption.¹⁴ Based on the evidence before me, I am unable to find that the police have provided the requisite reasonable basis for believing that endangerment to the life or safety of police officers, the public, or individuals under arrest would reasonably be expected to result from disclosure of the record at issue. In my view, the police's evidence of harm is purely speculative. Accordingly, I find that the record does not qualify for exemption under section 8(1)(e).

[29] To establish that section 8(1)(i) applies, the police were required to provide sufficient evidence to satisfy me that disclosure of the record could reasonably be expected to endanger the security of a building, vehicle, system or procedure established for the protection of items and, further, that such protection is reasonably required. I am not persuaded that there is a reasonable expectation that disclosure of the record could reasonably be expected to endanger the security of the police's building, vehicles, or systems, as suggested by the police. In my view, the police have not provided evidence to support the assertion that the security of their building, vehicles, and systems could be put at risk, beyond fanciful speculation. Further, the harms explained by the police are not reasonably connected with disclosure of the actual information that is at issue. Not being satisfied that disclosure of the record could reasonably be expected to result in endangerment or serious compromise to the protection of the police's building, vehicles or systems, I find that section 8(1)(i) does not apply.

[30] In order to rely on section 8(1)(j), the police were required to satisfy me that disclosure of the number of firearms could reasonably be expected to facilitate the escape from custody of a person who is under lawful detention. In past orders of this office, this exemption, or the provincial equivalent at section 14(1)(j) of *FIPPA*, has applied to information such as construction plans for a maximum security facility,¹⁵ detention centre security procedures,¹⁶ and the location of detention centre CCTV cameras.¹⁷ Based on the evidence before me, however, I am not persuaded that disclosing the number of firearms that the police have could reasonably be expected to result in the harm contemplated by section 8(1)(j), and I find that this exemption does

¹³ Order PO-1817-R.

¹⁴ Order PO-2003.

¹⁵ Order 187.

¹⁶ Order PO-3453.

¹⁷ Order PO-3723.

not apply.

[31] In order to rely on the exemption in section 8(1)(l), the police had to provide evidence demonstrating that disclosing the number of firearms could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Previous orders have determined that the serial numbers of firearms qualify for exemption under section 14(1)(l) of *FIPPA*, which is the provincial equivalent of section 8(1)(l) of *MFIPPA*.¹⁸ In this case, however, the appellant has clearly indicated that he is not interested in obtaining the registration numbers of the police service's firearms. He only wants to know the total number of firearms that the police service has. In this context, I have not been provided with sufficient evidence to establish that disclosure of the record could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime, and I find that section 8(1)(l) does not apply.

[32] Given the speculative nature of the police's submissions, and the fact that evidence amounting to speculation of possible harm is not sufficient to meet the requirements of the section 8 exemptions, I find that the record does not qualify for exemption under sections 8(1)(a), (e), (i), (j) or (l).

Issue B: Does the discretionary "danger to health or safety" exemption at section 13 apply to the record?

[33] The police also rely on the exemption at section 13 withhold the record at issue. This section states:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[34] For this exemption to apply, the institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁹

[35] In support of their reliance on the "danger to health or safety" exemption, the police submit that they have never revealed the total number of weapons they have to the public, as to do so would be cause for "grave concern" to the police, civilians, and

¹⁸ Order PO-2455, upheld on judicial review on this point in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)* [2007] O.J. No. 4233 (Div. Ct.). See also Order MO-2862.

¹⁹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

the public.

[36] The appellant's submissions did not specifically address the police's reliance on section 13.

[37] The test under section 13 is similar to that under section 8(1)(e). Given the similarity of the police's submissions on this issue with their submissions on section 8, and for similar reasons, I find that section 13 does not apply.

[38] The fact that the requested information has not previously been made public does not, on its own, meet the burden of establishing that section 13 applies. In order to withhold the record from disclosure based on this exemption, the police were required to provide sufficient evidence to satisfy me that disclosure of the record could reasonably be expected to seriously threaten the safety or health of an individual. They were also required to provide evidence to support a connection between the record and the purported threat to safety or health. They have not done so. Specifically, the police have not demonstrated a risk of harm that is well beyond the merely possible or speculative, as required for section 13 to apply.²⁰ Further, I am unable to infer such a risk based on the contents of the record. Therefore, I find that the record does not qualify for exemption under section 13.

[39] Since none of the claimed exemptions apply to the record, I will order it disclosed to the appellant.

ORDER:

1. I order the police to disclose the record at issue to the appellant by **October 24, 2019**.
2. I reserve the right to require the police to provide me with a copy of the record disclosed to the appellant, in order to verify compliance with order provision 1.

Original signed by _____
Jaime Cardy
Adjudicator

September 25, 2019 _____

²⁰ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.