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

ORDER M_913

Appeal M_9700007

Metropolitan Toronto Police Services Board

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NATURE OF THE APPEAL:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a list of all police officers employed by the Police. The request was made by two reporters.

The Police identified a document entitled "nominal roll" as the record responsive to the request. This document contains not only the names of the officers, but additional information such as the date on which they joined the force, as well as their rank and unit alignment. The Police denied access to the information on the basis of the following exemptions contained in the Act:

- danger to health or safety - section 13
- invasion of privacy - section 14(1)

The requesters filed an appeal of this decision. They confirmed that they are just seeking access to the names of the officers. They also maintain that there is a compelling public interest in disclosure of this information thus raising the possible application of section 16 of the Act, the so-called "public interest override".

A Notice of Inquiry was sent to the Police, the appellants and the Metropolitan Toronto Police Association (MTPA). Representations were received from the Police, the MTPA and counsel representing the appellants. For ease of reference, I will refer to counsel as the "appellant" in this order.

DISCUSSION:

PRELIMINARY MATTERS

Adequacy of the Decision Letter

The appellant submits that the decision letter of the Police was inadequate in that it failed to provide any reasons for denying access to the requested information. He states that the decision merely refers to sections of the Act and that it is insufficient "... to allow our client to make informed decisions and meaningful representations in this appeal".

Section 22(1)(b) of the Act sets out the requirements of the contents of a notice of refusal to give access to a record. This section reads:

> Notice of refusal to give access to a record or part under section 19 shall set out,
>
> (b) where there is such a record,
>
> (i) the specific provision of this Act under which access is refused,
>
> (ii) the reason the provision applies to the record,

(iii) the name and position of the person responsible for making the decision, and

(iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

The decision letter issued by the Police stated that access was being denied to the listing of police officers pursuant to sections 13, 14(1)(f) and 14(3)(d) of the Act. The letter went on to note that "... These sections apply because ..." followed by a paragraph setting out the language of these sections.

In my view, the purpose of the inclusion of the above information in a notice of refusal is to put the requester in a position to make a reasonably informed decision on whether to seek a review of the head's decision (Orders 158, P-235 and P-324). In this case, I agree with the appellant that the decision letter of the Police should have provided him with **reasons** for the denial of access. A restatement of the language of the legislation is not sufficient to satisfy the requirement in section 29(1)(b)(ii) of the Act. It does not provide an explanation of why the exemptions claimed by the Police apply to the record. Section 29(1)(b)(i) already requires that the notice contain the provision of the Act under which access is refused.

Notwithstanding the inadequacy of the decision letter, the appellant has exercised his right of appeal and provided extensive representations which I have referred to in my disposition of all the issues relating to the information in this order. In these circumstances, there would be no useful purpose served in requiring the Police to provide a new decision letter to the appellant.

Severance of the Nominal Roll

The appellant submits that the Police have failed to apply the principle of severance as set out in section 4(2) of the Act. This section states:

> If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

It is the position of the appellant that the Police did not sever personal information from the nominal roll so as to disclose that part of the document containing the information responsive to the request. Therefore, the appellant submits that the Police may not rely on the exemptions they have claimed.

The Notice of Inquiry sent to the parties contained the following description of the records at issue:

> The Police identified a "nominal roll" containing not only the names of police officers, but also other information such as the date the officers joined the Police,

> their rank and so on. The appellant advised the Appeals Officer that he is seeking access to the police officers' names only. Therefore, only the police officers' names remain at issue in this appeal.

In my view, this statement makes it clear that what is at issue is solely the names of the officers. Even after it was confirmed that the appeal was limited to this information, the Police continued to deny access on the basis of the exemptions originally claimed. Their submissions address the information at issue.

In these circumstances, I find that the Police have considered their obligation under section 4(2) of the Act but have determined that even the names of the officers as they appear on the nominal roll fall under certain exemptions. Therefore, in their view, no information could reasonably be severed from this document and disclosed. I see no reason why the Police cannot continue to maintain that the exemptions in sections 13 and 14(1) of the Act apply to deny access to the names of the officers.

DANGER TO HEALTH OR SAFETY

It is the position of the Police, supported by the MTPA, that disclosure of the names of the officers are exempt under section 13 of the Act which 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.

The appellant first submits that the Police have failed to meet the test and onus for the application of the exemption in that they have not established a clear and direct linkage between the disclosure of information in the nominal roll and the harm alleged. He states that the Police have given no indication of which individual's health or safety may be threatened or the way in which an individual's health and safety would be threatened by disclosure of the officers' names.

The Police and the MTPA identify police officers, their families and third parties including friends and neighbours as the individuals whose safety or health could reasonably be expected to be seriously threatened as a result of the disclosure. As far as the manner in which such harm may occur, the Police state as follows:

> A certain number of police officers are assigned at any time to 'old clothes' [drug squad, intelligence, morality officers, etc.] or 'plain clothes' duties, typified by the detectives in field units and specialized squads [homicide, fraud, hold-up, etc.]. These officers go about their tasks in non-uniform dress precisely because they can operate most efficiently and efficaciously in public where they are not readily identified as police officers.
>
> Should such individuals be easily identifiable as police officers at certain stages of their investigative work, their tasks would be made more difficult, unwieldy, or sometimes impossible. Interviewing potential witnesses in certain situations could endanger either interviewer or interviewee, for example.

The Police go on to state that these submissions are not limited to intelligence undercover officers only but also to any officers who do not wear uniforms in the performance of their regular duties.

The MTPA submits:

> Undercover officers must and do seriously guard their identities. Uniform officers must do the same for themselves and their families. Their identification could facilitate unwanted, even dangerous, interventions in their lives, facilitate identification of homes where guns may be stored and otherwise endanger them.

In addition, both the Police and the MTPA submit that the findings in Order M-465 should be adopted in this appeal. That order involved a request to the Police for a list of the names and ranks of all sworn Police personnel, as well as a list of the names and positions of all civilian personnel of the Police. Inquiry Officer John Higgins found that section 13 of the Act applied to exempt that information from disclosure.

Inquiry Officer Higgins acknowledged, as do the Police in this appeal, that the nature of police work often requires that it be carried out in public and that frequently officers must identify themselves in the context of a particular investigation. In fact, in this case, the Police state that had this request been for the names of officers involved with a particular investigation, "... we would probably not have objected to the provision of this information".

Nonetheless, the Inquiry Officer found that he was satisfied "... that the identification of individuals as police officers could reasonably be expected to make their work more dangerous in many situations".

The position of the appellant is that the names of the police officers are publicly available in that, as a rule the Police make no secret of officers' names. The appellant points to the issuance of press releases which contain the names and badge numbers of the officers who have signed off. The appellant notes that the Police regularly provide the media with the names of officers involved in incidents or investigations. He states that this information is not limited to the media and the public may contact the Police switchboard to confirm whether an individual is still a member of the police force and to which division he or she is attached.

Finally, the appellant has provided me with a copy of a page from the Police's Web site which shows the names, positions, telephone and badge numbers of the members of the Sexual Assault Squad of the Police.

Based on the public availability of the information described above, the appellant questions how disclosure of only the names of the officers could result in the harms outlined in section 13.

The appellant also seeks to distinguish Order M-465 from the facts of the present case. He states that the finding in that case turned on the request for the officers' **positions** within the force. He states that:

> The risk of harm contemplated by the Commissioner is clearly greater where the officer's name is linked to an identifiable position, e.g. vice, undercover, etc. This risk disappears in the instant case if the police were to sever the record and provide only the officers' names from the nominal roll, without indicating the position each officer holds.

My review of Order M-465 indicates that the information at issue in that case was the names and **ranks** of the Police **officers** and the names and **positions** of the civilian personnel. In certain cases the ranks of Police officers would provide no more information than their names in that they would be identified as a Sergeant, Police Constable, etc. However, I do acknowledge that there would be cases in which the identification of the rank of an officer as a detective, for example, could provide the additional information which could heighten the risk of harm should information be disclosed.

In my opinion, these submissions of the appellant relate to the discretion provided to the Police by section 13 of the Act, regarding the disclosure of the names of specific officers and the context in which such names are disclosed. That is, the Police take the position that there are circumstances, as described in their submissions cited previously, where disclosure of the names of officers could reasonably be expected to seriously threaten the safety or health of an officer or his or her family. Conversely, there are situations where such harms do not exist or where the Police have identified in their discretion that there are overriding reasons for the provision of names of officers to the public - for example, in the context of a specific investigation or the publication of the names of the officers of the Sexual Assault Squad. However, when considering the list of all the officers of the force as a whole, which is the subject of this request, they have exercised their discretion in favour of non-disclosure.

I accept the submissions of the Police that identification of police officers could reasonably be expected to make their work more dangerous in many situations. I also accept that there are instances in which such identification could place family members and others at risk.

As Inquiry Officer Higgins noted in Order M-465, in order to find that the section 13 exemption applies, it is not necessary to demonstrate that actual injuries would occur as a result of disclosure . The Police must establish that a serious **threat** to health or safety could reasonably be expected. Based on the submissions of the Police and the MTPA, I am satisfied that this requirement has been met in the circumstances of this case. Accordingly, I find that section 13 of the Act applies to exempt the information at issue in this appeal from disclosure.

Because of the way in which I have resolved this issue, it is not necessary for me to consider the possible application of section 14(1).

PUBLIC INTEREST IN DISCLOSURE

The appellant argues that there exists a public interest in the disclosure of the information at issue under section 16 of the Act, which 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. [emphasis added]

The appellant submits that there is a compelling public interest in the dissemination of information about the Police in the form of investigative journalism which clearly outweighs the purpose of the denial of access to individuals' personal information. He indicates that the nature of the requesters is a significant consideration in this case as his clients have a duty to fully inform the public about the activities of public institutions, such as the Police, and the public has a right to be so informed. He states:

> It is our position that this right and corresponding duty create a compelling public interest in the disclosure of information about the activities of one of the most inaccessible public institutions, the Police.
>
> ... Full and frank disclosure will submit the Police to necessary public scrutiny; increase public confidence in the Police and foster open discussion about its activities, its mandate and its internal procedures. Anything less than full and frank disclosure will engender a lack of confidence and mistrust in the institution, a far greater harm than any that might occur as a result of disclosure of the Nominal Roll.

In Order P-1121, Inquiry Officer Holly Big Canoe made the following observations about the application of the "public interest override" contained in section 23 of the provincial Freedom of Information and Protection of Privacy Act, the equivalent of section 16 of the Act. In that case, records had been exempted under section 21 of the provincial legislation. However, in my view, the reasoning is equally applicable to any exemption under the Act. She stated:

> There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.
>
> "Compelling" is defined in the Oxford dictionary as "rousing strong interest or attention". In order to find that there is a compelling public interest in disclosure, the information at issue must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has available to effectively express opinion or to make political choices.
>
> If a compelling public interest is established, it must then be balanced against the purpose of the exemption which has been found to apply. In my view, this balancing involves weighing the relationship of the information against the Act's central purposes of shedding light on the operations of government and protecting the privacy of personal information held by government. Section 23 recognizes that each of the exemptions listed in the section, while serving to protect valid interests, must yield on occasion to the public interest in access to information held by government. An important consideration in this balance is the extent to

> which denying access to the information is consistent with the purpose of the exemption.

I adopt the approach expressed in Order P-1121 for the purposes of this appeal.

As noted above, the appellant's submissions on the application of section 16 relate to the public interest in disclosure of the record outweighing the purpose of the personal privacy exemption in section 14 of the Act. I have found that the names of the officers are exempt pursuant to section 13 of the Act. The appellant has not indicated how the public interest in disclosure outweighs the purpose of this exemption.

Furthermore, the appellant has failed to explain how the disclosure of all of the names of the officers employed by the Police would result in the public being fully informed about the activities of the Police, its mandate and internal procedures.

In the circumstances of this appeal, therefore, I am not persuaded that there exists a compelling public interest in the disclosure of the information at issue that clearly outweighs the purpose of the exemption in section 13. Accordingly, I find that section 16 of the Act does not apply in the circumstances of this appeal. The result is that the names of the officers are exempt from disclosure.

ORDER:

I uphold the decision of the Police.

Original signed by: March 20, 1997
Anita Fineberg
Inquiry Officer