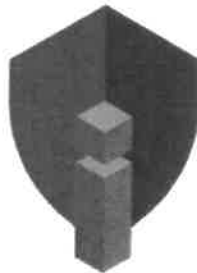


Office of the
INTEGRITY
COMMISSIONER



Bureau du
COMMISSAIRE
À L'INTÉGRITÉ

REPORT OF FINDINGS

Right to Information and Protection of Privacy Act

Matter No: 2018-4404-AP-2395

July 26, 2018

I BACKGROUND

1. This Report of the Commissioner's Findings is made pursuant to s. 73(1)(a) of the *Right to Information and Protection of Privacy Act*¹.
2. The Applicant filed a request with the Miramichi Police Force to obtain access to all of his information related to visits from the Miramichi Police Force on November 15 and December 13, 2017. The Miramichi Police Force responded to his Request by informing the Applicant that as both of these visits were related to ongoing investigations by other police agencies, it was refusing access in full to the information pursuant to s. 29(1)(a) of the *Act*, being that disclosure could reasonably be expected to harm a law enforcement matter.
3. The Applicant was not satisfied with the Miramichi Police Force's response, and filed a complaint with our Office; therefore, pursuant to s. 68(1) of the *Act*, the Office of the Integrity Commissioner conducted an investigation into this complaint matter.

II OUR INVESTIGATION PROCESS

4. Upon receiving a complaint, it is assigned to one of my Legal Counsel, to whom I have delegated the authority to attempt to informally resolve the complaint, pursuant to s. 68(2) of the *Act*. As per the newly amended provisions of the *Act* which came into effect April 1, 2018, the informal resolution process must be completed within 45 business days after the commencement of the informal resolution process, as stipulated by s. 68(3). The *Act* is silent on when the informal resolution process commences; therefore, our Office has determined that it will start upon receiving the public body's relevant records, which are to be provided by the public body no later than 10 business days after receiving notice of the complaint.
5. Where a complaint has not yet been resolved within the 45 business days, the informal resolution process can only be extended with the consent of both the person who made the complaint and the head of the public body. If consent cannot be obtained from both parties, the informal resolution process must come to an end, and the complaint must be remitted to me, the Commissioner, for my formal investigation and final disposition.
6. In this matter, my Senior Legal Counsel assigned to this complaint was attempting to informally resolve the Applicant's complaint when the 45 business days were set to expire on June 19, 2018. While the

¹ S.N.B., c. R-10.6 (the "*Act*")

Miramichi Police Force consented to continuing the informal resolution process, Senior Legal Counsel was not able to obtain consent from the Applicant, despite our efforts to contact him. As a result, the informal resolution process came to an end and the complaint was remitted to me. Therefore, according to s. 73(1) of the *Act*, I am required to conclude my investigation by issuing this Report of Findings, with recommendations to the Miramichi Police Force.

III ANALYSIS AND FINDINGS

7. As part of my investigation into this matter, I reviewed the requested information. It consists of three records, identified as MPF 2017-11325, MPF 2017-11332 and MPF 2017-10507. By reviewing the correspondence between the Miramichi Police Force and my Senior Legal Counsel during the informal resolution process, I note that the Miramichi Police Force indicated that it was refusing access to record MPF 2017-10507, that there was a very large investigation ongoing by another policing agency involving the Applicant, and that disclosure of the requested information could cause serious consequences to its investigation. In its view, this information could be protected from disclosure pursuant to s. 29(1)(a) of the *Act*; however, it was now amenable to disclose records MPF 2017-11325 and MPF 2017-11332 to the Applicant, with proper redactions to the third parties' personal information.
8. In response, Senior Legal Counsel proposed that the names and contact information of the individuals who made complaints to the outside policing agencies against the Applicant be redacted, as these had not been disclosed to the Applicant by the Miramichi Police Force. On this point, I agree with Senior Legal Counsel that the records MPF 2017-11325 and MPF 2017-11332 should be disclosed to the Applicant, but that the names and contact information of the complainants can be redacted from records, as disclosure of this information could be deemed to be an unreasonable invasion of their privacy as per s. 21 of the *Act*.
9. With regards to record MPF 2017-10507, I do not agree with Miramichi Police Force's reasons for refusing access to the information. In order to refuse access under s. 29(1)(a) of the *Act*, the Miramichi Police Force has to meet the test of harm that accompanies that provision, being that disclosure of the requested information "could reasonably be expected to harm" a law enforcement matter.
10. The harm test captures the need for the Miramichi Police Force to show that disclosure will result in a risk of harm that is well beyond the mere possible or speculative, as enunciated in the Supreme Court in *Ontario (CSCS) v. Ontario (IPC)*² in para. 52.

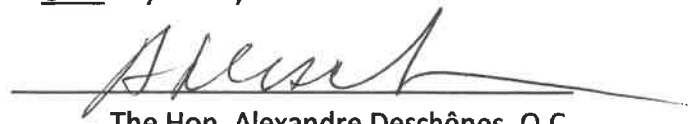
² [2014] 1 S.C.R. 674.

11. In this matter, I am not convinced that the Miramichi Police Force has provided sufficient facts and arguments that show that disclosure would result in a risk of harm to the other policing agency's ongoing investigation. The fact that a police investigation matter is still ongoing is not a determinative factor in refusing access to information under this provision.
12. Upon reviewing record MPF 2017-10507, I note that most of the information contained therein is known to the Applicant and does not reveal anything about the other policing agency's investigation, save for the fact that one is in fact ongoing, a fact the Applicant is already aware of.
13. Having read the interchange between my Senior Legal Counsel and the Miramichi Police Force regarding this record, I see that the Miramichi Police Force was amenable to disclosing the entire record to the Applicant, with minor redactions to confidential police information, being Canadian Policing Information Center (CPIC) numbers assigned to specific CPIC users. I agree.

V RECOMMENDATION

14. In light of my findings above, and of the fact that we could not informally resolve the matter within the allotted time, even though the Miramichi Police Force appeared to be amenable to doing so, I am issuing the following recommendations to the Miramichi Police Force pursuant to s. 73(1)(a)(i)(A) of the Act:
 - a) that it disclose records MPF 2017-11325 and MPF 2017-11332 to the Applicant by redacting the names and contact information of the third party complainants; and,
 - b) that it disclose record MPF 2017-10507 to the Applicant by redacting the CPIC user numbers found at page 6 of the record.
15. As set out in s. 74(2) of the Act, the Miramichi Police Force is to notify the Applicant of its decision with respect to this recommendation. If the Miramichi Police Force decides to accept the recommendation, s. 74(3) requires the Miramichi Police Force to comply or make the decision it deems appropriate within 20 business days of receipt of this Report. If the Miramichi Police Force decides not to accept the recommendation or fails to notify the Applicant of its decision, the Applicant will have right to appeal the matter to the Court of Queen's Bench in accordance with section 75 of the Act.

This Report issued in Fredericton, New Brunswick this 26th day of July 2018.



The Hon. Alexandre Deschênes, Q.C.
Integrity Commissioner of New Brunswick