



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-3

Appeal M-910133

Hamilton-Wentworth Regional Board of Commissioners of Police



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O R D E R

BACKGROUND:

On March 19, 1991, the Hamilton-Wentworth Regional Police received a request for a copy of a report dated "October or November, 1990" containing information about an incident which occurred at the O'Toole's Restaurant in Hamilton, Ontario. Although the request was received by the Hamilton-Wentworth Regional Police, for purposes of the Municipal Freedom of Information and Protection of Privacy Act, 1989, (the "Act"), the "institution" is the Hamilton- Wentworth Regional Board of Commissioners of Police.

On March 20, 1991, the institution advised the appellant that disclosure of the records "may affect the interests of a third party." In accordance with section 21(1)(b) of the Act, the institution notified a third party of the request, and solicited the third party's views as to whether the records should be disclosed.

On April 15, 1991, the institution informed the appellant that partial access to the records had been granted. A one page document entitled "Supplementary Report", dated November 21, 1990, with severances, was enclosed with the institution's decision letter to the appellant. Access to the remainder of the records was denied pursuant to sections 8(1)(e), 14(2)(e), 14(3)(b), 14(3)(d), 14(3)(g), 38(a), and 38(b) of the Act.

The appellant appealed the decision of the institution. The appellant indicated that he had no interest in gaining access to the identity of anyone who may have made any statements included in the records, but only in what was said.

The Appeals Officer obtained and reviewed a copy of the records. They consist of four one page documents identified as an "Offence Form", two

"Supplementary Reports" (one of which had already been partially disclosed to the appellant), and a "Suspect Description" report.

In an attempt to mediate this appeal, the Appeals Officer discussed the request with the institution. The institution then granted partial access to the "Suspect Description" report dated November 19, 1991. The appellant had previously been denied access to this entire document.

This further disclosure did not satisfy the appellant and it became apparent that further mediation would not be possible. What remains at issue is the narrative portion of two one page forms, namely, the "Offence Form", and one of the "Supplementary or Incident Reports", dated November 19, 1990.

A Notice of Inquiry was sent to the appellant, the institution, and to the third party who had been notified of the request by the institution (the "affected person"), enclosing a report prepared by the Appeals Officer. The purpose of this report is to assist the parties in making their representations to this office concerning the subject matter of the appeal. The report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to be relevant to the appeal. It also advises parties that, in making their representations, they need not limit themselves to the questions set out in the report.

Written representations were received from the institution and the affected person.

In its representations, the institution claimed that section 8(2)(a) of the Act applied and, accordingly, the appellant was notified by this office of this new claim.

ISSUES:

The key issues arising in this appeal are as follows:

- A. Whether the information contained in the requested records qualifies as "personal information", as defined by section 2(1) of the Act.
- B. Whether the requested records are properly exempt from disclosure pursuant to the discretionary exemption provided by section 38(b) of the Act.
- C. Whether the requested records would qualify for exemption under section 8(1) (e) of the Act.
- D. Whether the requested records would qualify for exemption under section 8(2) (a) of the Act.
- E. Whether the requested records are properly exempt from disclosure pursuant to the discretionary exemption provided by section 38(a) of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the requested records qualifies as "personal information", as defined by section 2(1) of the Act.

Section 2(1) of the Act states, in part:

"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
- [IPC Order M-3/October 31, 1991]**

transactions in which the individual has been involved,

...

(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,

...

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

(h) the individual's name where 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;

In my view, the statements and/or allegations contained in the records are considered recorded information about identifiable individuals - the appellant and the affected person. Further, I find that these statements and/or allegations are properly considered the personal information of both the appellant and the affected person within the definition of personal information contained in section 2(1).

ISSUE B: Whether the requested records are properly exempt from disclosure pursuant to the discretionary exemption provided by section 38(b) of the Act.

Section 36(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of an institution. However, this right of access is not absolute; section 38 provides a number of exceptions to this general right of access to personal information by the person to whom it relates.

Specifically, section 38(b) of the Act states:

A head may refuse to disclose to the individual to whom the information relates personal information,

- (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 38(b) introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his/her own personal information against another individual's right to the protection of their privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the head the discretion to deny access to the personal information of the requester.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists a series of circumstances which, if present, would raise the presumption of an unjustified invasion of personal privacy.

The institution specifically relied on the application of sections 14(3) (b), (d) and (g) to raise the presumption that disclosure of the records at issue would constitute an unjustified invasion of personal privacy. Reliance was also placed on the provisions of section 14(2) (e).

Sections 14(3) (b), (d) and (g) of the Act read as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (d) relates to employment or educational history;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

Section 14(2)(e) of the Act states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

I will first address the application of section 14(3)(b). I have considered the circumstances under which the records at issue were created and the steps taken during the course of the investigation by the Hamilton-Wentworth Regional Police. Having reviewed these circumstances, it is my view that the personal information contained in the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy of an individual other than the requester under section 14(3)(b) have been satisfied.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy have been established, I must then consider whether any other provisions of the Act come into play to rebut this presumption.

In dealing with this issue, I have carefully considered the records at issue, the representations which have been provided, and the provisions of the Act which may rebut the presumption of an unjustified invasion of personal privacy. Having done so, I find that the presumption raised by section 14(3)(b) of the Act has not been rebutted. Therefore, it is not necessary for me to consider the application of sections 14(3)(d) and (g) or section 14(2)(e).

In the circumstances of this particular case, I am of the opinion that disclosure of the records at issue would constitute an unjustified invasion of the personal privacy of the affected person and, therefore, would qualify for exemption under section 38(b) of the Act. It is generally desirable to provide a more detailed explanation of reasons for reaching this conclusion. However, in this case, I have limited my explanatory remarks because of my concern that further explanation could, in itself, interfere with the personal privacy of another person.

The institution has provided submissions regarding the exercise of discretion to refuse to disclose the records at issue and I am satisfied that the discretion has been exercised in accordance with established legal principles, and should not be disturbed on appeal.

My decision on Issue B makes it unnecessary for me to consider Issues C, D, and E.

ORDER:

I uphold the decision.

Original signed by: _____
Tom Wright
Commissioner

October 31, 1991
Date