



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

ORDER M-62

Appeals M-9200101 and M-9200125

Hamilton-Wentworth Regional Police



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ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Hamilton-Wentworth Regional Police (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to criminal charges that had been laid by the Police against two named individuals.

The Police notified the two individuals of the request under section 21 of the Act and indicated to them that it was considering releasing some of the requested information. Both individuals objected to the release of any personal information that relates to them, and made representation to the Police as to why it should not disclose the information.

Following receipt of the representations from the two individuals, the Police decided to release to the requester certain information contained in the records.

The two individuals have appealed the Police's decision to grant access. The appeals were processed under two separate file numbers; however, since both decisions arose from the same request and the records at issue are virtually identical in both appeals, I have decided to dispose of them under one order.

Mediation was not successful and the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the decision was sent to the Police, the two individuals (the appellants), and the original requester (the affected person). Representations were received from one of the appellants only. The Police and the affected person did not send any representations.

The information at issue in these appeals is contained in the records entitled "Case Envelope", "Instructions for Crown Counsel", "Court Information", and in two police officers' notebooks.

ISSUES:

- A. Whether the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.

DISCUSSION:

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

In all cases where the request involves access to personal information, it is my responsibility to ensure that the information in question falls within the definition of "personal information" as set out in section 2(1) of the Act and to determine whether this information relates to the appellant, another individual or both.

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 transactions in which the individual has been involved,
- ...
- (d) the address, telephone number, fingerprints or blood type of the individual,
- ...
- (h) the individual's name if 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;

The information contained in the records at issue in these appeals falls within one or more of the aforementioned definitions of personal information, and relates only to the appellants.

ISSUE B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.

Once it has been determined that a record contains personal information, section 14 of the Act prohibits the disclosure of this information, except in certain circumstances. Specifically, section 14(1)(f) of the Act states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Subsections 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(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

One of the appellants has submitted that section 14(3)(b) of the Act applies. This section states:

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

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;

I have reviewed the records and I am satisfied that the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law by the appellants, and I find that the requirements for a presumed unjustified invasion of the personal privacy of the appellants under section 14(3)(b) have been satisfied.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy under section 14(3) have been established, I must consider whether any other provisions of the Act come into play to rebut this presumption.

Section 14(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 14(3). In my view, the records at issue in this appeal do not contain information relevant to section 14(4).

Section 14(2) of the Act provides some criteria to be considered in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. A combination of listed and/or unlisted factors weighing in favour of disclosure might be so compelling as to outweigh a presumption under section 14(3); however, such a case would be extremely unusual.

I have not received any representations from the affected person or the Police regarding the relevance of any factors which would support the disclosure of the information. The Police has not provided me with any reasons as to why the information should be disclosed.

In my view, the presumption raised by section 14(3)(b) of the Act has not been rebutted. Accordingly, I find that the disclosure of the records at issue would constitute an unjustified invasion of the personal privacy of the appellants.

As indicated above, section 14 is a mandatory exemption which requires institutions covered under the Act to deny access to personal information that relates to other individuals, unless one or more of the specific exceptions listed under the section apply to the circumstances of the case. I have not been provided with any evidence that any of the exceptions apply in the circumstances of these appeals. I have found that disclosure of the information would constitute an unjustified invasion of the personal privacy of the appellants; accordingly, the information should not be disclosed.

ORDER:

I order the Police not to disclose the records in these two appeals.

Original signed by: _____
Asfaw Seife
Inquiry Officer

November 10, 1992