



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

# **ORDER M-54**

## **Appeal M-910401**

### **Ottawa Board of Commissioners of Police**



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# ORDER

## BACKGROUND:

The Ottawa Police Force (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for all information relating to the requester.

The Police determined that the disclosure of some of the records which were responsive to the request "might affect the interests of two third parties". In accordance with section 21(1)(b) of the Act, the Police notified two individuals of the request, and solicited their views as to whether the records should be disclosed.

After receipt of representations from the two individuals, the Police decided to release the records relating to them but to deny access in part to other records. The two individuals appealed the decision to release the records relating to them.

During the course of mediation, the Police released additional records to the requester. The requester has also agreed that certain severances are no longer at issue in this appeal.

The records at issue in this appeal are:

1. A three page letter dated December 20, 1973.
2. The third paragraph of an Occurrence Report dated December 14, 1973.
3. The last seven lines of the first paragraph and the second paragraph of an Investigation Report dated December 18.
4. Statement of a Witness, dated June 6, 1991, less the date of birth, phone number and address of the witness.

Attempts to mediate this appeal were not successful. Accordingly, a Notice of Inquiry was sent to the appellants, the Police and the requester. Enclosed with notice was a report prepared by the Appeals Officer. The purpose of this report is to assist the parties in making their representations to the office concerning the subject matter of the appeal.

Written representations were received from the appellants, the Police and the requester.

## ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the Police properly exercised their discretion under section 38(b) of the Act in deciding to grant access to the records to the requester.

### **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in the requested records qualifies as "personal information", as defined in 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 transactions in which the individual has been involved,  
...
- (e) the personal opinions or views of the individual except if they relate to another individual,  
...
- (g) the views or opinions of another individual about the individual, and
- (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;

I have reviewed the records at issue and, in my view, the second paragraph of Record 1, the last six lines of the first paragraph of Record 3, and the third block of information in Record 4 contain the personal information of the requester only. The remainder of the records contain the personal information of the requester and the appellants.

**ISSUE B: If the answer to Issue A is yes, whether the Police properly exercised their discretion under section 38(b) of the Act in deciding to grant access to the records to the requester.**

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 the Police. 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,

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

Since I have found under Issue A that portions of the records contain the personal information of the requester only, disclosure of this information to the requester cannot constitute an unjustified invasion of the appellants' personal privacy and section 38(b) cannot apply.

With regard to the portions of the records that contain the personal information of the requester and the appellants, section 38(b) introduces a balancing principle. The Police must look at the information and weigh the requester's right to his/her own personal information against another individual's right to the protection of his/her privacy. Although the Police may determine that release of personal information would constitute an unjustified invasion of the other individual's personal privacy, section 38(b) gives the Police the discretion to grant or deny access to the information to 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(3) lists a series of circumstances which, if present, would raise the presumption of an unjustified invasion of personal privacy.

The Police have stated that section 14(3)(b) applies to the records at issue. Section 14(3)(b) of the Act reads 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;

I am satisfied 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 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 consider whether any other provision of the Act comes 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).

I have also carefully considered the provisions of section 14(2) and, in my view, there is no combination of factors listed in section 14(2) which would operate to rebut the presumption of an unjustified invasion of personal privacy. Therefore, the presumption raised by section 14(3)(b) applies and disclosure of the information would constitute an unjustified invasion of the privacy of the appellants.

However, section 38(b) is a discretionary exemption. As I have stated, although the Police may determine that release of personal information would constitute an unjustified invasion of another individual's personal privacy, section 38(b) gives the Police the discretion to grant or deny access to the requester.

In his representations, counsel for the appellants states:

The Appellant has a true fear for his safety and the safety of his family if his views or opinions concerning the Requester are made known to the Requester.

...

The information was given for the purposes of investigating and/or prosecuting the actions of the Requester against the Appellant and his family. All discussions of confidentiality were verbal. Recording officers indicated at all times that the personal information relating to the Appellant would be kept confidential and the information relating to the Appellant's statements concerning the requester would only be released or made public to the requester to the extent necessary to investigate and prosecute the requester.

In their representations, the Police state:

... [T]he information under appeal was compiled and is identifiable as part of an investigation into a possible violation of law. The information would therefore fall within the exemption provided by section 14(3)(b).

I have considered section 14(2) and the following circumstances which I feel are relevant in my decision to release the information under appeal.

The statement dated December 20, 1973 authored by [one appellant] ..., the record entitled Occurrence Report ... [the severed information in] ... the Ottawa Police Investigation Report resulted in [one appellant] testifying in court ... [in] 1974. The [appellant] gave evidence-in-chief and was cross-examined by the requester's counsel on the evidence to substantiate the [criminal] charge, which is found in [Records 1, 2 and 3].

...

[Record 4] authored by the [other appellant] is almost identical to that authored by the Appellant. The statement [of the appellant] was provided to defence counsel and obtained by the requester from her counsel.

...

These factors were considered in the exercise of the head's discretion to release the records ...

The Police have provided representations regarding their exercise of discretion to disclose the information at issue. Having reviewed these representations, I find nothing to indicate that the exercise of discretion was improper and would not alter it on appeal.

The result in this appeal highlights an important aspect of section 38 of the Act. Section 38 is a discretionary exemption and even if, as in this case, the disclosure of the information would be an unjustified invasion of another individual's privacy, discretion can be exercised in favour of disclosure. In my view, the

availability of discretion under section 38 is consistent with one of the purposes of the Act which is "to ... provide individuals with a right of access to [their own] information".

**ORDER:**

1. I uphold the decision to release Record 1, the third paragraph of Record 2, the last seven lines of the first paragraph and the second paragraph of Record 3 and Record 4 less the date of birth, phone number and address of the witness.
2. I order the Police to disclose the records to the requester within 35 days following the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
2. The Police are further ordered to advise me in writing within five days of the date on which disclosure was made. Such notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with the provisions of this order, I order the Police to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 1, **only** upon request.

Original signed by: \_\_\_\_\_

Tom Wright  
Commissioner

\_\_\_\_\_ October 16, 1992