



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

ORDER M-88

Appeals M-9200150 and M-9200194

Ottawa Board of Commissioners of Police



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Ottawa Board of Commissioners of Police (the Police) received two requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information in the custody or under the control of the Police relating to the requester. The first request covered information dating back two years from the date of the request, while the second request, which was received by the Police several days after the first one, indicated that the requester sought access to her personal information dating back to 1986.

The Police issued two decision letters, and provided the requester access to the responsive records, with certain parts severed pursuant to section 14 of the Act.

The requester appealed both decisions. Separate appeal files were opened for each decision; however, because both files involve requests for personal information by the same requester from the same institution, this order will dispose of the issues raised in both appeals.

During mediation, the appellant indicated that she wanted access to all information contained in the records, and also stated she believes that more records responsive to her request exist.

The appellant also indicated that she is seeking access to her husband's personal information and her own personal information dating back to 1960. However, since this was a new request for which a decision has not been issued by the Police, the appellant was advised that it would be outside the scope of this appeal.

During the course of processing the appeal, the Police advised that its discretion to refuse access to the severed portions of the records was exercised under section 38(b) of the Act.

Further mediation was not successful, and notice that an inquiry was being conducted to review the decision of the Police was sent to the appellant and the Police. Representations were received from both the appellant and the Police.

The records which contain the information remaining at issue in this appeal are General Occurrence Reports (seven pages), an Occurrence Selection list, and a one-page handwritten note. These records were created by the Police as a result of the appellant's complaints that she was a victim of criminal conduct by certain identified individuals (the affected persons).

ISSUES:

The issues in this appeal are as follows:

- A. Whether the Police search for responsive records was reasonable in the circumstances.

- B. Whether the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the discretionary exemption provided by section 38(b) of the Act applies to any parts of the records.

ISSUE A: Whether the Police search for responsive records was reasonable in the circumstances.

The appellant believes that more records responsive to her request exist in the custody or under the control of the Police. During the mediation stage of the appeal, she provided information describing specific records which she believes exist. This information was forwarded to the Police by the Appeals Officer processing the appeal.

In its representations, the Police describe the steps taken to locate records responsive to the appellant's requests. Five individuals responsible for the actual searches have submitted sworn affidavits describing the searches they conducted, which included computer and manual searches, in the following areas: the Records Section, the Professional Standards Section, the Victim Crisis Unit, the In-House Computer, and the Executive Command Area.

In my view, the searches conducted by the Police are reasonable and, in the circumstances, I am satisfied that the Police have taken all reasonable steps to locate all records that might be responsive to the two original requests.

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

In section 2(1) of the Act, "personal information" is defined, in part, as:

"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,

...

- (c) any identifying number, symbol or other particular assigned to the individual,

- (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;

Having reviewed the records, I find that they contain information that satisfies the definition of personal information in section 2 of the Act, and in my view, the personal information relates to the appellant and the affected persons.

ISSUE C: If the answer to Issue B is yes, whether the discretionary exemption provided by section 38(b) of the Act applies to any parts of the records.

I have found under Issue B that the records contain personal information that relates to the appellant and other individuals. Section 36(1) of the Act gives individuals a general right of access to personal information that relates to them, which is in the custody or under the control of institutions covered by the Act. However, this right of access is not absolute. Section 38 provides a number of exceptions to this general right of access, including section 38(b), which reads as follows:

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;

Section 38(b) introduces a balancing principle. The Police must look at the information and weigh the requester's right of access to his/her own personal information against other individuals right to the protection of their personal privacy. If the Police determine that release of the information would constitute an unjustified invasion of the other individuals' personal privacy, then section 38(b) gives the Police discretion to deny the requester access to his/her own personal information [Orders M-22, M-28].

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 specifically claim that section 14(3)(b) applies.

Section 14(3)(b) 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;

The records contain personal information received by the Police as part of its investigation of alleged criminal conduct. The information severed from the records consists of the address, telephone number, date of birth and PRN (personal reference number) of each of the affected persons who are identified as suspects. I am satisfied that this personal information was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the requirements for a presumed unjustified invasion of the personal privacy of the affected persons under section 14(3)(b) has 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.

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 record does not contain any information that pertains to section 14(4).

Section 14(2) of the Act also provides a list of factors, a combination of which, if present in the circumstances of an appeal, could operate to rebut a presumption (Order M-63). Having carefully reviewed the records and considered all representations, in my view, there is no combination of factors under section 14(2) which rebut the presumption under section 14(3)(b) of the Act.

Therefore, in the circumstances of this appeal, I am of the view that disclosure of the information relating to the address, telephone number, date of birth and PRN (personal reference number) of each of the affected persons would constitute an unjustified invasion of the personal privacy of the affected persons and, therefore, qualifies for exemption under section 38(b) of the Act.

Section 38(b) is a discretionary exemption. The Police have provided representations regarding the exercise of discretion to refuse to disclose the information at issue, and I find nothing to indicate that the exercise of discretion was improper.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ February 19, 1993