



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-119

Appeals M-9300001, M-9300002 and M-9300003

Durham Region 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/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Durham Region Board of Commissioners of Police (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of a Police Constable's report, field notes and statements pertaining to a fire that occurred on an island. Pursuant to section 21(1)(b) of the Act, the Police notified eighteen individuals named in the records (the affected persons), inviting them to make representations concerning the disclosure of their personal information. Eleven of the affected persons consented and two of the affected persons objected to the disclosure of their personal information. Five of the affected persons did not respond.

The Police decided to grant access to the information and the affected persons were advised. Three of the affected persons appealed the decision of the Police to disclose their personal information.

During the course of mediation, the three appellants agreed to have their appeals consolidated into one, with one appellant acting as agent for the other two.

ISSUES:

The issues in this appeal are:

- A. Whether the records contain personal information as defined by 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.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the records contain personal information as defined by section 2(1) of the Act.

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

"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,

...

- (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,
- ...
- (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;

The records contain recorded information relating to statements given by the appellants. I have reviewed the information the Police are proposing to disclose to the requester and, in my view, it qualifies as the personal information of the affected persons.

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(1) of the Act prohibits the disclosure of this information except in certain circumstances. In my view, the only exception which has possible application in the circumstances of this appeal is section 14(1)(f) of the Act, which reads:

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.

Section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that the section 14(1)(f) exception applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

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 the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. The representations of the Police do not refer to section 14(2).

In his representations, the requester submits that a civil action concerning the fire is in existence, and that the requested information "is probably relevant in the law suit". Section 14(2)(d) 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,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

In Order P-312, former Assistant Commissioner Tom Mitchinson established the following four-part test in relation to section 21(2)(d) of the provincial Freedom of Information and Protection of Privacy Act, which is identical in wording to section 14(2)(d) of the Act:

In my view, in order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; **and**
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; **and**
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

I agree with former Assistant Commissioner Mitchinson, and adopt this test for the purposes of this appeal.

I acknowledge that the appellant is involved in a civil proceeding, and that the personal information he is seeking access to may have some bearing on the determination of the right in question. However, I have not been provided with any information which indicates that the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing. Therefore, in the circumstances of this appeal, I feel that section 14(2)(d) is not a relevant consideration.

I have carefully considered the record at issue, the representations which have been provided, and the provisions of the Act. In my view, in the circumstances of this appeal, there are no factors present which weigh in favour of disclosure of the severed information. Having found that the information the Police decided to disclose to the requester qualifies as personal information, and in the absence of any factors weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) does not apply, and the information is properly exempt under section 14 of the Act.

ORDER:

I order the Police **not** to disclose the personal information of the appellants to the requester.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ April 16, 1993