



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-110

Appeal M-9200123

Palmerston Police Service



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ORDER

The Sheridan College of Applied Arts and Technology (the College) received a request from a student at the College for access to records relating to allegations of improper conduct against the requester, made by a named police officer in the Palmerston Police Service (the Police). The requester specifically sought access to a letter written by the named police officer to the College complaining about the requester's conduct. The College transferred the request relating to the complaint letter to the Police for processing under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Police denied the requester access to the letter pursuant to section 8(1)(b) of the Act. The requester appealed the decision of the Police to deny access to the letter and it is this decision that is the subject of this appeal.

Mediation was unsuccessful, and notice that an inquiry was being conducted to review the decision of the Police was sent to the appellant, the Police and the named police officer (the affected person). Representations were received from the appellant only.

The Police have made no representations as to why section 8(1)(b) of the Act applies to the record. This section is a discretionary exemption and I will not consider its application in the absence of representations by the Police.

The Police have not claimed any other discretionary or mandatory exemption that might apply to the record. In such cases, it is my responsibility in keeping with the inherent obligation of this office to ensure the integrity of Ontario's access and privacy protection scheme, to conduct an independent review of the record to determine whether it is necessary to consider the application of the provisions of the Act relating to protection of personal privacy. In the circumstances of this case, having reviewed the record, I feel that the provisions of the Act relating to a requester's right of access to his/her own personal information and those relating to the protection of personal privacy of other individuals should be considered. In my view, the information contained in the record is sufficient to trigger the consideration of these provisions.

Personal information is defined in section 2(1) of the Act, in part, as "... recorded information about an identifiable individual ...". The record at issue is a three-page letter sent by the affected person to an employee of the College describing an incident in which the appellant was allegedly involved and outlining his concerns regarding the conduct of the appellant. In my view, the record contains personal information that relates to both the appellant and the affected person.

The appellant's request is only for information that relates to himself. In dealing with such a request, the Police should make their decision in light of the provisions of sections 36, 37, and 38 of the Act. Section 37 sets out the procedures for dealing with such requests. Section 38 provides for exceptions to the general rule, set out in section 36(1), that a requester has a right of access to his or her personal information in the custody or under the control of an institution covered by the Act. Where the personal information relates to the requester as well as another individual, as is the case in this appeal, that individual's privacy interests should be taken into account under section 38(b) before the record is disclosed to the requester.

Therefore, the sole issue in this appeal is whether the disclosure of the record would be an unjustified

invasion of the personal privacy of the affected person under section 38(b) of the Act. Section 38(b) 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;

Section 38(b) introduces a balancing principle. In making a decision under this section, the right of the appellant to access his own personal information should be weighed against the affected person's right to protection of his or her privacy. If it is determined that release of the information would constitute an unjustified invasion of the personal privacy of the affected person, then section 38(b) gives the Police the discretion to deny the appellant access to the information.

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 38(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

Sections 14(2) and (3) of the Act provide guidance in determining if disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(2) lists a number of factors to be considered in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In some rare cases, a presumption may be rebutted by a combination of factors under section 14(2), listed or unlisted (Order 20, Order M-7).

In considering whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the affected person in the circumstances of this appeal, I have reviewed the presumptions listed in section 14(3) and in my view, none apply in the circumstances of this appeal. I have also reviewed the factors listed under section 14(2), and I find that none of the factors which weigh in favour of protection of privacy are relevant.

As indicated earlier in this order, neither the Police nor the affected person have made any representations regarding the disclosure of the record. The appellant has submitted detailed representations arguing that there are no grounds to withhold the record from him.

After carefully considering the contents of the record, the representations of the appellant and the provisions

of the Act, I am not satisfied that disclosure of the record to the appellant would constitute an unjustified invasion of the personal privacy of the affected person. Accordingly, I find that section 38(b) of the Act does not apply to the record.

ORDER:

1. I order the Police to disclose the record to the appellant within 35 days of the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with the provisions of this order, I order the Police to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1, **only** upon my request.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ March 31, 1993