



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-155

Appeal M-9200346

Waterloo Regional Police Services Board



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ORDER

BACKGROUND:

The Waterloo Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for all information relating to an incident in which a named individual was assaulted and the subsequent charges laid and disposition of same. The requester is a lawyer acting on behalf of the individual who was assaulted.

The Police notified eight individuals named in the records (the affected persons) and invited them to make representations concerning the disclosure of the records. Three of the individuals consented and information pertaining to them was disclosed, the other five did not respond. The Police granted partial access to the records, with portions severed pursuant to the exemptions in sections 8(1)(c), 8(1)(d), 14(1)(f), 14(2)(h) and 38(b) of the Act. The requester appealed the denial of access.

During the course of mediation, certain parts of the records were identified as not being responsive to the appellant's request, including the portions of the records which were severed pursuant to section 8(1)(c) of the Act. With the agreement of the appellant, these severances were removed from the scope of the appeal.

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 parties.

The information remaining at issue in this appeal consists of various identifiers assigned to the two accused and the witnesses to the assault, including name, address, telephone number, date and place of birth, marital status, physical characteristics, employer and occupation, social insurance number, fingerprint file number and criminal investigation file number. The information appears in portions of records entitled "General Occurrence Report", "Supplementary Report", "Supplementary Persons Report", "Crown Counsel Brief", "Statement Form" and in police officer's notebook entries and handwritten witness statements. The names of the two accused were disclosed to the appellant.

ISSUES:

The issues in this appeal are:

- A. Whether the information contained in the 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 discretionary exemption provided by section 38(b) of the Act applies.

- C. Whether the information contained in the records qualifies for exemption under section 8(1)(d) of the Act.
- D. If the answer to Issues A and C is yes, whether the records qualify for exemption pursuant to the discretionary exemption provided by section 38(a) of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the 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, ...

Having reviewed the pages of the records which contain the information which remains at issue in this appeal, I find that they contain information that satisfies the definition of personal information in section 2(1) of the Act. I also find that this personal information relates to both the appellant and the affected persons.

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

I found under Issue A that the records contain personal information which relates to both the appellant and the affected persons. 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

appellant's right of access to his own personal information against the affected persons' right to the protection of their personal privacy. If the Police determine that release of the information would constitute an unjustified invasion of the affected persons' personal privacy, then section 38(b) gives the Police the discretion to deny the appellant access to his own personal information.

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 appellant. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

In their representations the Police state that the subject records are the "official documentation of a law enforcement investigation." Section 14(3)(b) of the Act 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 the circumstances under which they were created or supplied to the Police and I am satisfied that the personal information 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 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 records 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.

The appellant, in his submissions states that his client has suffered a serious brain injury as a result of the assault and wishes to commence a legal proceeding against some of the responsible persons. The persons that the police interviewed would be persons with some knowledge or information involving the incident. The appellant wishes to obtain their names and any other information which could assist him to locate them. The appellant alleges that the information he is seeking is not available elsewhere, including from his own

client who is unable to provide the information due to this injuries. The appellant submits as follows:

... in these circumstances, where an individual has been very seriously injured, and is not able to provide the information due to these injuries, and where his only possible means of commencing legal proceedings is to obtain information, from these individuals, that the balance weighs in favour of my client. Without this information, my client will probably remain a burden to society by virtue of his receipt of government social assistance.

The submissions of the appellant raise the type of considerations found in section 14(2)(d) of the Act. Section 14(2)(d) of the municipal 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, in discussing the provincial equivalent of section 14(2)(d), stated:

In my view, in order for section 21(2)(d) [section 14(2)(d) of the municipal Act] 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.

The appellant does not raise any of the other factors set out in section 14(2) which favour disclosure. Even if I was prepared to accept that section 14(2)(d) is a relevant consideration in the circumstances of this appeal, this factor alone is not sufficient to outweigh the presumption of an unjustified invasion of personal privacy contained in section 14(3)(b).

Having carefully considered all of the circumstances of this appeal, I find that the presumption of an unjustified invasion of the personal privacy of the affected persons has not been rebutted. Accordingly, I find that the disclosure of the severed portions of the record would constitute an unjustified invasion of the privacy of the affected persons and, therefore, qualify 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.

Having found under Issue B that the exemption in section 38(b) of the Act applies to the information at issue, it is not necessary for me to address Issues C or D.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
 Holly Big Canoe
 Inquiry Officer

_____ June 28, 1993