



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-215

Appeal M-9300009

Niagara Regional Police Services Board



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ORDER

BACKGROUND:

The Niagara Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records which the requester believed contained personal information pertaining to himself. These records related to:

1. Criminal file packages;
2. Criminal intelligence records;
3. Firearms permits, acquisition certificates and registrations;
4. Investigative case records;
5. Public complaints.

The Police granted partial access to the records. Access was denied, however, to three general incident reports and a computer print-out containing the names and addresses of certain individuals under sections 8(1)(d) and (g), 8(2)(a), 14(3)(b), and 38(a) and (b) of the Act.

The requester appealed this decision. During the course of mediation, the appellant narrowed the scope of his appeal to two general incident reports: Record 1 (incident report 92090584) and Record 2 (incident report 92-90036 - severences only).

As further mediation was not possible, notice that an inquiry was being conducted to review the decision of the Police was sent to the Police and to the appellant. Representations were received from the Police only.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the records contain any "personal information" as defined by section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the records contain the personal information of the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to the record.
- C. Whether the discretionary exemptions provided by sections 8(1)(d) and (g) of the Act apply to the records.
- D. Whether the discretionary exemption provided by section 8(2)(a) of the Act applies to the records.

- E. If the answer to Issues C or D is yes, whether the discretionary exemption provided by section 38(a) applies to the records.

SUBMISSIONS/CONCLUSIONS:

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

Section 2(1) of the Act states, in part, that:

"personal information" means recorded information about an identifiable individual, including,

...

- (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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (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,
- ...
- (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 and find that both of them contain personal information about the appellant as well as the names, employment history, views and opinions and other personal information of other identifiable individuals.

ISSUE B: If the answer to Issue A is yes, and the records contain the personal information of the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to the record.

In my discussion of Issue A, I found that Records 1 and 2 contain the personal information of the appellant and other individuals. Section 36(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 38 provides a number of exemptions to this general right of access. One such exemption is found in section 38(b) of the Act, which reads:

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 or her personal information against the rights of other individuals to the protection of their personal privacy. If the Police determine that the release of the information would constitute an unjustified invasion of the personal privacy of other individuals, then section 38(b) gives the Police the discretion to deny the requester access to the personal 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), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy.

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 rely on the application of section 14(3)(b) to raise the presumption that disclosure of the records at issue would constitute an unjustified invasion of personal privacy.

Section 14(3)(b) reads as follows:

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 Police submit that the records at issue relate to an investigation into a possible violation of the firearms provisions of The Criminal Code. I have carefully reviewed the records at issue and the representations submitted by the Police. I am satisfied that the records in this case were compiled and are identifiable as part of an investigation into a possible violation of law.

On this basis, I am satisfied that the presumption contained in section 14(3)(b) applies and that the disclosure of the information at issue would constitute an unjustified invasion of the personal privacy of other individuals.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption (Order M-170).

I have considered section 14(4) of the Act and find that none of the personal information at issue in this appeal falls within the ambit of this provision. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies. Accordingly, I find that as the presumption described in section 14(3)(b) of the Act has not been rebutted, the disclosure of the personal information contained in the records would constitute an unjustified invasion of the personal privacy of persons other than the appellant. The records are, therefore, properly exempt from disclosure.

Section 38(b) of the Act is a discretionary exemption. I have reviewed the representations provided by the Police regarding their exercise of discretion in favour of denying access. I find nothing improper in the exercise of discretion and would not alter this determination on appeal.

Having found that the records are properly exempt from disclosure under section 38(b) of the Act, it is not necessary for me to deal with the remaining issues in this appeal.

ORDER:

[IPC Order M-215/November 10, 1993]

I uphold the Police's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ November 10, 1993