



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-222

Appeal M-9300147

Stratford Police Services Board



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

ORDER

BACKGROUND:

A request was made to the Stratford Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the full copy of the criminal record of a person other than the requester (the affected person). Pursuant to section 21(1)(b) of the Act, the Police notified the affected person who declined to consent to the disclosure of the record to the requester. The Police subsequently denied access to the record on the basis of exemptions in sections 8(2)(a) and (c), 14(1)(a) and 14(3)(b) of the Act. The requester appealed the decision of the Police.

Mediation was not successful, and notice that an inquiry was being conducted was sent to the appellant, the Police and the affected person. Representations were received from the appellant and the Police.

The records in issue consist of documents setting out the criminal record of the affected person.

ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the record qualifies as "personal information" as defined in 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.
- C. Whether the discretionary exemptions provided by sections 8(2)(a) and (c) of the Act apply.

SUBMISSIONS/CONCLUSIONS:

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

Section 2(1) of the Act reads, in part, as follows:

"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, [emphasis added]

...

In my view, the record requested by the appellant contains the criminal history of an identifiable individual, the affected person. It therefore qualifies as personal information of that individual as defined by section 2(1) of the Act.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.

I have found under Issue A that the information at issue qualifies as "personal information" under the Act. I must now determine if access to this information should be denied on the basis that it falls within the exemption provided by section 14 of the Act.

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in certain circumstances listed under the section.

In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which reads as follows:

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.

Because 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 section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in the unjustified invasion of the personal privacy of the individual to whom the information relates.

In their representations, the Police do not make reference to any specific section 14 exemptions. They do, however, state that Order M-68 applies in this case. Having reviewed this order, I assume that the Police
[IPC Order M-222/November 23,1993]

are referring to sections 14(2)(b) and (f), and 14(3)(b) of the Act and relying on the application of these exemptions for the purpose of this appeal.

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;

The records in issue are computer print-outs containing summaries of charges laid against the affected person, and their disposition.

In my view, a record of charges that have been laid against an individual, and their disposition, is not information which is compiled as part of an investigation. Rather, it is the result of either a guilty plea, conviction or discharge by a court, or withdrawal of the charges by the police, all of which by their very nature are events which take place after any investigation has been completed (Order M-68). In my view, therefore, the responsive records do not satisfy the requirements of section 14(3)(b) of the Act.

Accordingly, I am of the view that there is no presumed unjustified invasion of personal privacy in the circumstances of this appeal. I am also of the opinion that none of the information at issue falls within the ambit of section 14(4) of the Act.

I will now consider whether there are any other circumstances arising in this appeal which are relevant to the disposition of this issue.

The appellant submits that he requires the records for the purposes of a civil action in which he is a party, in order to challenge the evidence of a witness as to the character of another party to the action. While he does not make reference to a specific provision in the Act, his request pertains to section 14(2)(d) as supporting disclosure in these circumstances.

The Police submit that section 14(2)(f) of the Act is a relevant consideration which weighs in favour of privacy protection.

These sections state:

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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (f) the personal information is highly sensitive;

In order for section 14(2)(d) of the 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 or question; **and**
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[Order P-312]

The appellant has not provided me with sufficient evidence to establish either the legal right in issue, or how the disclosure of the criminal record of the affected person has some bearing on or is significant to the determination of a legal right. I therefore find that section 14(2)(d) is not a relevant factor in the circumstances of this appeal.

With respect to section 14(2)(f), I am of the view that the personal information contained in the criminal record is highly sensitive. I therefore find that section 14(2)(f) is a relevant factor in the circumstances of this appeal.

Having reviewed the record and considered all the circumstances of this appeal, I find that only section 14(2)(f) is a relevant factor. This factor weighs in favour of privacy protection and, in my view, disclosure of the record would constitute an unjustified invasion of the personal privacy of the affected person, the individual to whom the information relates.

Because of the manner in which I have disposed of Issues A and B, it is not necessary for me to consider Issue C.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ November 23, 1993