



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-214**

## **Appeal M-9200462**

### **Guelph Police Services Board**



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# ORDER

## BACKGROUND:

The Guelph Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for copies of all records pertaining to the employment of the requester. The Police granted the requester partial access to the records, denying access to the remaining portions of the records based on a number of identified exemptions found in the Act. The requester appealed the denial of access.

As a result of mediation of the appeal, only four records remain at issue in this appeal. The records are internal Police memoranda and consist of a total of ten pages. Access to these records was denied, in whole or in part, pursuant to the exemptions found in sections 8(1)(d), 8(2)(a), 14(1)(f), 14(3)(b) and 14(3)(d), as well as sections 38(a) and 38(b) of the Act.

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

## ISSUES:

- A. Whether the records contain "personal information" that relates to the appellant, as defined in section 2(1) of the Act.
- B. Whether the discretionary exemptions provided by sections 8(2)(a) and/or 8(1)(d) of the Act apply to the records.
- C. If the answer to Issues A and B is yes, whether the discretionary exemption provided by section 38(a) of the Act applies to the records.
- D. If the answer to Issue A is yes, and the records contain personal information that also relates to individuals other than the appellant, whether the discretionary exemption provided by section 38(b) of the Act applies to the records.
- E. If the records contain personal information that solely relates to individuals other than the appellant, whether section 14 of the Act applies to the records.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the records contain "personal information" that relates to the appellant, as defined in 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  
...

Having reviewed the records at issue, I am satisfied that they contain information which satisfies the definition of personal information under section 2(1) of the Act and that this personal information relates to the appellant. Portions of the records at issue contain personal information that also relates to individuals other than the appellant.

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 exceptions to this general right of access, including section 38(a), which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information;

[emphasis added]

The Police claim that sections 8(2)(a) and 8(1)(d) apply to the records at issue in this appeal. I will now consider the application of these exemptions.

**ISSUE B: Whether the discretionary exemptions provided by sections 8(2)(a) and/or 8(1)(d) of the Act apply to the records.**

Section 8(2)(a) reads as follows:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In order to qualify for exemption under section 8(2)(a) of the Act, a record must satisfy each part of the following three part test:

1. the record must be a report; **and**

2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders 200 and M-12]

In order to satisfy the first part of the test i.e. to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

It is my view that, after reviewing the contents of the records and the representations of the Police, all four records meet the three-part test set out above. The records qualify as reports within the above-stated definition and are prepared by members of the Police, in the course of their investigation of alleged criminal conduct by the appellant. Accordingly, I find that the records qualify for exemption under section 8(2)(a) of the Act.

**ISSUE C: If the answer to Issues A and B is yes, whether the discretionary exemption provided by section 38(a) of the Act applies to the records.**

Under Issue A, I found that the records contain personal information that relates to the appellant and under Issue B, I found that this information qualifies for exemption under section 8(2)(a) of the Act. Therefore, the discretionary exemption under section 38(a) is available to the Police with respect to the information at issue. This means that the Police have the discretion to withhold the personal information of the requester.

The Police have provided representations regarding their decision to exercise discretion in favour of not disclosing the records. I have reviewed these representations and I find nothing improper in the circumstances of this appeal.

Because of the manner in which I have disposed of Issues A, B and C, it is not necessary for me to deal with Issues D and E.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_

November 10, 1993

Asfaw Seife  
Inquiry Officer