



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-174

Appeal M-9200226

Hamilton-Wentworth Regional Police Services Board



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ORDER

BACKGROUND:

The Hamilton-Wentworth Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for records in two named homicide investigations that contain the personal information of the requester.

The Police advised the requester that one of the homicide investigations was conducted by the Halton Regional Police Services Board, and that this part of his request had been transferred to that institution. With respect to the other homicide investigation, the Police identified a part of a four-page record as being responsive to the request, and issued a decision denying access to the information under sections 38(a), 8(1)(d) and (g), 8(2)(a), 38(b) and 14(1) of the Act. The requester appealed the decision.

The appeal was not resolved by mediation, and notice that an inquiry was being conducted to review the decision was sent to the Police and to the appellant. Representations were received from both parties. In their representations, the Police raised sections 8(1)(e) and (l) of the Act as additional exemptions.

The record at issue is a Supplementary Report regarding a homicide investigation. The Police state that only point 10 on page 3 of the record is responsive to the appellant's request. After reviewing the record, I agree with the Police that this is the only part of the record that is responsive to the request.

ISSUES:

- A. Whether the record contains "personal information" as defined by section 2(1) of the Act.
- B. Whether the discretionary exemption provided by section 8(1)(d) of the Act applies to the record.
- C. If the answer to Issues A and B is yes, whether the discretionary exemption provided by section 38(a) of the Act applies in the circumstances of this appeal.
- D. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies to the record.
- E. Whether any of the discretionary exemptions provided by sections 8(1)(e), (g), (l) and/or 8(2)(a) of the Act apply to the record.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the record contains personal information as defined by 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 part of the record at issue, I am satisfied that it contains information which satisfies the definition of personal information under section 2(1) of the Act and that this personal information relates to the appellant, as well as other identifiable 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 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(1)(d), (e), (g), (l) and 8(2)(a) apply to the part of the record at issue in this appeal, and I will now consider the application of these exemptions.

ISSUE B: Whether the discretionary exemption provided by section 8(1)(d) of the Act applies to the record.

Section 8(1)(d) states

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

In order for a record to qualify for exemption under section 8(1)(d), the matter to which the record relates

must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act. This definition reads as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The Police submit that the record was prepared in the course of an investigation of murder and robbery offenses under the Criminal Code of Canada. Such an investigation could lead to proceedings in a court of law in which a penalty could be imposed. I therefore consider the matter to which the information relates to be a law enforcement matter.

The Police claim that disclosure of the part of the record at issue could reasonably be expected to reveal the identity of a confidential source of information relating to the law enforcement matter.

It has been stated in a number of orders that in order to establish confidentiality under section 14(1)(d) of the Act, the institution must provide evidence of the circumstances in which the information was given (Orders 139 and P-304).

In their representations, the Police have provided a description of the circumstances under which the information was received, as well as a description of its practices when conducting such investigations. Having carefully reviewed these representations and the contents of the record, and particularly the specific information that I found is responsive to the appellant's request, it is my view that, in the circumstances of this appeal, disclosure of the part of the record at issue could reasonably be expected to reveal the identity of a confidential source of information. Accordingly, I find that the record qualifies for exemption under section 8(1)(d) 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 in the circumstances of this appeal.

Under Issue A, I found that the record contains personal information that relates to the appellant and under Issue B, I found that this information qualifies for exemption under section 8(1)(d) 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 its decision to exercise discretion in favour of not disclosing the record. 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: _____
Asfaw Seife
Inquiry Officer

_____ August 11, 1993