



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

# **ORDER M-223**

**Appeal M-9300218**

**Durham Regional Police Services Board**



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# ORDER

## BACKGROUND:

The Durham 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 named police officers' notebooks for certain identified dates. The requester is a representative of an individual who was involved in an incident leading to criminal charges being laid against him. As the requester received no response within 30 days from the time the request was made, the requester appealed on the basis that the Police were deemed to have refused access to the records responsive to the request, pursuant to section 22(4) of the Act.

Within a few days of the filing of the appeal, the requester received a decision letter from the Police granting access to copies of the front covers of the officers' notebooks, but denying access to the contents of the notebooks, pursuant to sections 8(1)(a), 8(1)(b) and 14(1)(f) of the Act. The requester appealed the decision of the Police to deny access to the requested information.

Mediation of the appeal was not possible, 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. In her representations, the appellant narrowed the scope of her appeal to the denial of those parts of the notebooks of the named police officers showing the dates they worked and portions containing certain information relating to a named individual.

The appellant also commented in her representations on the length of time it took the Police to clarify what she believed was a straight-forward request and to make a decision responsive on her request. I note, however, that the appellant exercised her remedy under the Act in filing an appeal on a deemed refusal basis after the Police failed to respond to her request within 30 days.

## RECORDS:

The records remaining at issue are those portions of the police officers' notebooks showing the dates the police officers were on duty and portions containing information about a named individual.

## ISSUES:

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

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the records at issue contain personal information as defined in section 2(1) of the Act.**

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

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

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of 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, and
- (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;

As indicated earlier in this order, the appellant's request has been narrowed to those parts of the records which contain the dates on which the named officers were on duty and certain information about a named individual.

Having reviewed the records, I find that the information showing the dates on which the named police officers were on duty does not qualify as personal information under the definition of "personal information" in section 2(1) of the Act. However, the information requested by the appellant regarding the named individual is personal information that properly falls under the definition and relates solely to the named individual.

**ISSUE B: If the answer to Issue A is yes and the records contain personal information that relates to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies.**

I have found that portions of the record contain the personal information of an individual other than the appellant.

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than 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) of the Act, 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.

In determining whether section 14(1)(f) applies, consideration should be given to sections 14(2) and (3) of the Act, which provide guidance in determining whether or not disclosure of personal information would constitute an unjustified invasion of personal privacy, and section 14(4), which lists a number of specific types of information the disclosure of which does not constitute an unjustified invasion of personal privacy.

Section 14(2) provides a non-exhaustive list of criteria for the Police to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy, while section 14(3) identifies specific types of personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

Once it is determined that the requirements for a presumed unjustified invasion of personal privacy under section 14(3) have been established, I must consider whether any other provisions of the Act come into play to rebut this presumption. 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).

The Police submit that section 14(3)(b) is relevant to the severed personal information. This section 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;

All of the personal information relating to the named individual is information compiled by members of the Police and is identifiable as part of their investigation of an alleged criminal offence. 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 the named individual.

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.

I am of the view that all of the records containing the personal information of the named individual are properly exempt from disclosure under section 14(1) of the Act.

**ISSUE C: Whether the discretionary exemptions provided by sections 8(1)(a) and/or 8(1)(b) of the Act apply to the records at issue.**

Sections 8(1)(a) and (b) of the Act provide as follows:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

The Police state that the appellant has filed complaints under the Police Services Act against the named police officers and that the investigation of the complaints is ongoing. They claim that the disclosure of the dates in question could reasonably be expected to interfere with this investigation.

Previous orders have found that investigations of complaints into allegations of police wrongdoing conducted under the Police Services Act are law enforcement matters that fall within the definition of the term "law enforcement" in section 2(1) of the Act (Orders P-285 and P-482).

The purpose of sections 8(1)(a) and (b) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter or investigation. The Police bear the onus of providing evidence to substantiate that the law enforcement matter is ongoing and the reasonableness of the expected harm(s).

Based on the representations of the Police and the appellant, I am satisfied that the law enforcement matter referred to above is ongoing.

In my view, the exceptions to access set out in section 8(1)(a) and (b) of the Act require that there exist a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the Police must establish a clear and direct linkage between the disclosure of the specific information and the harm which is alleged (Orders P-557 and M-202).

The representations of the Police regarding the application of sections 8(1)(a) and (b) fail to provide details as to how disclosure of the dates in question could have the effect of hampering or impeding the effectiveness of the law enforcement matter referred to above. The Police argue generally that police officers' notebooks are relevant to investigations of complaints regarding the actions of police officers accused of misconduct; however, they have not explained how the disclosure of the dates in question could interfere with the investigation of the specific complaints outlined above. In my view, the Police have failed to establish a clear and direct linkage between the disclosure of the specific information and the alleged harm, in the context of the circumstances of this appeal. Therefore, I am not satisfied that the disclosure of this information could reasonably be expected to interfere with a law enforcement matter or investigation. Accordingly, it is my view that the requirements of sections 8(1)(a) and (b) of the Act have not been met.

### **ORDER:**

1. I order the Police to disclose to the appellant those parts of the named police officers' notebooks which indicate the dates the police officers were on duty, within 15 days of the date of this order.
2. I uphold the decision of the Police not to disclose to the appellant the remaining records at issue.
3. In order to verify compliance with the provisions of this order, I order the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_ November 24, 1993