



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-225**

## **Appeal M-9300166**

### **Waterloo Regional Police Services Board**



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# ORDER

## BACKGROUND:

The Waterloo 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 copies of statements which were provided to a Police Officer by three individuals who witnessed a fire which occurred in June 1992. At that point in time, the individuals were under the age of 12 and, therefore, not subject to the provisions of The Young Offenders Act.

The Police located three records that were responsive to the request. The Police also determined that the release of these documents might affect the interests of a number of third parties and, pursuant to section 21(1) of the Act, notified the parents of these individuals that an access request had been received. The third parties were then invited to make representations on whether the records in question should be released.

The parents of one third party consented to the disclosure of their child's witness statement and the document was released to the requester. The other two parties, however, did not make any submissions. The Police then made the decision to deny access to the remaining witness statements in full pursuant to sections 14(1)(f) and 14(3)(b) of the Act.

The mediation of this appeal was not successful 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.

## ISSUES:

The issues to be determined in this appeal are the following:

- A. Whether any of the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the information relates to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies to the information in question.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether any of the information contained in the records qualifies as "personal information" as defined in 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,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (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,
- ...
- (d) the address, telephone number, fingerprints or blood type of 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 witness statements and find that they contain recorded information about the two affected persons for the purposes of section 2(1) of the Act. I further find that the records do not contain any personal information relating to the appellant.

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

Once it has been determined that a record contains personal information, section 14 of the Act provides a general rule of non-disclosure of the personal information to any person other than the individual to whom the personal information relates. Section 14(1) provides some exceptions to this general rule of non-disclosure, one of which is section 14(1)(f) of the Act. This provision reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

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if the disclosure does not constitute an unjustified invasion of personal privacy.

In order for section 14(1)(f) to apply, I must find that the release of the personal information at issue would **not** constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. In Order M-170, Commissioner Tom Wright addressed the interrelationship between sections 14(2), (3) and (4) of the Act in the following way:

... [W]here personal information falls within one of the presumptions found in section 14(3) of the Act, a combination of the circumstances set out in section 14(2) of the Act which weigh in favour of disclosure cannot collectively operate to rebut the 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.

I adopt this approach for the purposes of this appeal.

It will now be necessary for me to review the presumptions contained in section 14(3) of the Act to determine whether the release of the personal information in the witness statements would constitute a presumed unjustified invasion of the personal privacy of the affected persons.

In their representations, the Police submit that section 14(3)(b) of the Act applies to the personal information contained in the records. This provision 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;

I have carefully reviewed the witness statements at issue along with the representations provided by the parties. I am satisfied that the information contained in the two documents was compiled as part of an

investigation into the cause of a fire which destroyed a building. That investigation, in turn, was directed towards determining whether there had been a possible violation of the law for which charges could be laid.

On this basis, I am satisfied that the personal information contained in the witness statements falls within the section 14(3)(b) presumption.

I have also considered section 14(4) of the Act and find that none of the personal information 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 to the facts of this case.

In his representations, counsel for the appellant indicates that his client, an insurance company, requires the witness statements to facilitate the conduct of a lawsuit against the affected persons. On that basis, counsel argues that section 14(2)(d) of the Act (the personal information is relevant to a fair determination of rights affecting the person who made the request) is a relevant consideration in determining whether the documents should be released. Even if the information contained in the witness statements fell within section 14(2)(d) of the Act, that consideration would be insufficient to dislodge the application of the presumption.

Accordingly, I find that the disclosure of the personal information contained in the witness statements would constitute an unjustified invasion of the personal privacy of the individuals to whom the information relates and that the records are properly exempt from disclosure under section 14 of the Act.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Irwin Glasberg  
Assistant Commissioner

\_\_\_\_\_ November 25, 1993