



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-247

Appeal M-9300317

Hamilton-Wentworth Regional Police Services Board



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ORDER

BACKGROUND:

The Hamilton-Wentworth Regional Police Services Board (the Police) received a request pursuant to the Municipal Freedom of Information and Protection of Privacy Act (the Act) for all information in its files which pertain to the requester, including criminal intelligence files, investigative case records and occurrence reports over a specified period of time.

The Police identified 34 pages of documents responsive to the request, providing full access to 11 pages while withholding 19 pages in part and four pages in their entirety pursuant to various sections of the Act. The requester appealed the denial of access.

During the mediation stage of the appeal, the appellant indicated that he was interested in only those records which pertain to an incident which occurred on March 4, 1993 and the subsequent police investigation of that incident. Only the first ten pages of the record originally identified by the Police relate to the March 4, 1993 incident and subsequent investigation and these documents, accordingly, comprise the record at issue in this appeal.

With respect to the record at issue, the Police withheld eight pages in their entirety pursuant to the exemptions provided by sections 8(1)(e), 8(2)(a), 14(2)(e), 14(2)(f), 14(2)(h), 14(3)(b), 14(3)(d), 14(3)(g) and 38(a) and (b) of the Act.

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

ISSUES:

The issues arising in this appeal are:

- A: Whether information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- B: Whether the discretionary exemptions provided by sections 8(2)(a) and 38(a) of the Act apply to the record.
- C: Whether the discretionary exemptions provided by sections 8(1)(e) and 38(a) of the Act apply to the record.
- D: If the answer to Issue A is yes, and the record contains the personal information of the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to the record.

ISSUE A: Whether information contained in the record 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, ...

Having reviewed the record, I am satisfied that it contains information which qualifies as "personal information" and, in my view, the information relates to the appellant and other identifiable individuals.

ISSUE B: Whether the discretionary exemptions provided by sections 8(2)(a) and 38(a) of the Act apply to the record.

The Police have claimed that section 8(2)(a) of the Act applies to the record at issue in this appeal. This section states that:

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;

For a record to qualify for exemption under section 8(2)(a) of the Act, the Police 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-17]

With respect to the first part of the test, then Assistant Commissioner Tom Wright established in Order 200 that, in order for a record to qualify as a report for the purposes of section 8(2)(a) of the Act, it must contain " ... a formal statement or account of the results of the collation and consideration of information", and those results would not generally include " ... mere observations or recordings of fact".

The record at issue in this appeal contains a number of written observations and recordings of fact. However, the record also represents an extensive collation of information and a detailed consideration of that information. In addition, conclusions are drawn from those facts and various courses of action are recommended. In my view, the record satisfies the first part of the three part test for section 8(2)(a).

The representations of the Police state, and I agree, that the record was prepared in the course of a law enforcement investigation of the appellant. As such, the record satisfies the second part of the test. I am also satisfied that part three of the test has been met, as the Police fall within the definition of a law enforcement agency.

I find that the record satisfies all three parts of the test under section 8(2)(a) of the Act and, therefore, qualifies for exemption from disclosure.

As I have found under Issue A that the record contains the personal information of the appellant, I must now consider the application of section 38(a) of the Act which states:

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]

This is a discretionary exemption which gives the head discretion to deny or grant access to an individual's own personal information in situations where one of the enumerated exemptions would apply. I have reviewed the representations of the Police regarding the exercise of their discretion to deny access to the records. I find nothing to indicate that the exercise of discretion was improper and I would not alter this determination on appeal.

Because of the manner in which I have dealt with Issue B, it is not necessary for me to address Issues C or D.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Donald Hale
Inquiry Officer

_____ January 17, 1994