



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-289

Appeal M-9300076

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 access to documents generated by a police investigation into a fire which occurred in May, 1991.

Pursuant to section 21 of the Act, the Police notified two individuals whose interests might be affected by the disclosure of the requested records. One of the individuals consented to the disclosure of his personal information; the other did not respond to the notification.

The Police located the records responsive to the request and denied access in part pursuant to sections 8(1)(i) and (l), 8(2)(a) and 14 of the Act. The requester appealed the decision.

The Police subsequently issued a supplementary decision letter in which they claimed the application of section 8(2)(b) indicating that "This subsection would apply to the information we feel is subject to the Young Offenders Act" (the YOA).

During mediation, the appellant agreed not to pursue access to certain records which appeared to fall within the scope of the YOA, and the scope of the appeal was narrowed accordingly.

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 and the Police. Representations were received from both parties. In their representations, the Police indicate that the exemptions provided by sections 8(1)(i) and (l) do not apply to the portions of the records remaining at issue. Accordingly, I will not deal with these sections in this order.

The parties were subsequently asked to comment on the application of the YOA to the records. Both the appellant and the Police submitted supplementary representations on this issue.

The records at issue in this appeal consist of those portions of two witness statements and a General Occurrence Report which were not disclosed to the appellant.

ISSUES:

- A. Whether 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, whether the mandatory exemption provided by section 14 of the Act applies.
- C. Whether the discretionary exemption provided by section 8(2)(a) of the Act applies.

D. Whether the discretionary exemption provided by section 8(2)(b) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual".

The information which has been removed from the records consists of the names and, in some cases, addresses, telephone numbers and the date of birth of adult individuals who were either interviewed by the Police or mentioned by the interviewees as part of the investigation into the circumstances surrounding the fire.

The balance of the information consists of the comments made by some of these individuals about their observations the day of the fire and comments of the reporting police officer about the demeanour of the individuals they interviewed.

I find that all of the information at issue constitutes the personal information of the individuals named in the records.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.

Under Issue A, I found that the information at issue constitutes the personal information of the individuals referred to in the police reports and witness statements. Once it has been determined that a record contains personal information, section 14(1)(f) of the Act prohibits the disclosure of the personal information to any person other than to the individual to whom the information relates, except in certain circumstances. Specifically, section 14(1)(f) reads:

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
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personal information, in order for me to find that section 14(1)(f) applies, I must find that the disclosure of the personal information 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 result in an unjustified invasion of personal privacy. Section 14(3) identifies specific types of personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In their representations, the Police submit that section 14(3)(b) of the Act applies to the information in question. 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 possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

As previously noted, the records were created by the Police as part of their investigation into the circumstances surrounding a fire which occurred in May, 1991. The Police submit:

If applicable, charges would have been laid, as in all police investigations. In this case charges of arson would certainly have been contemplated and considered by the investigators.

By way of further explanation police investigators are trained, in the case of a fire scene, to always assume arson until facts prove otherwise. This is so that vital evidence will not be overlooked ...

In these circumstances, I am satisfied that the requirements to establish a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act have been established. The presumption in section 14(3)(b) only requires that there be an investigation into a **possible** violation of law. Therefore, the fact that, in this case, no criminal charges were laid does not negate the applicability of section 14(3)(b) (Orders P-223 and P-237).

Once a presumption under section 14(3) of the Act has been established, it may only be rebutted by the criteria in section 14(4) or by the compelling public interest "override" in section 16 (Order M-170). I am of the opinion that none of the information at issue falls within the ambit of section 14(4) of the Act. 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.

The appellant appears to be making an argument that section 14(2)(d) (disclosure of the personal information is relevant to the fair determination of the rights of the person who made the request) is a relevant consideration in this case. The appellant has brought a civil action to recover the losses it sustained in the fire and submits that it is "... claiming access to information as a victim of the alleged crime ..."

Even if I were to find that section 14(2)(d) is a relevant consideration, this factor is not sufficient to rebut the section 14(3)(b) presumption.

Accordingly, I am of the view that the presumption contained in section 14(3)(b) applies to the personal information at issue in this appeal and the information is properly exempt under section 14 of the Act.

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

ORDER:

I uphold the decision of the Police.

Original signed by:
Anita Fineberg
Inquiry Officer

March 16, 1994