



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-317**

**Appeals M-9300044 and M-9300077**

**Peel Regional Police Services Board**



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# ORDER

On March 28, 1994, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

## **BACKGROUND:**

The Peel Regional Police Services Board (the Police) received two requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information related to an investigation of an alleged assault and the subsequent prosecution involving the requester. The first request was for access to the Police headquarters' and divisional personnel files of the requester and to a specific internal complaints file. The second request was for access to a specific prosecution file of the Complaints Investigation Bureau.

In response to both requests, the Police identified several hundred responsive records and granted access to the majority of them. Access was denied to other records, either in whole or in part, pursuant to sections 14(1) and 38(b) of the Act. The requester appealed the decisions of the Police. Appeal Numbers M-9300044 and M-9300077 were assigned to the two appeals. Because the parties, the issues and some of the records are the same, this order will dispose of both appeals.

During mediation, the scope of the appeals was narrowed to 19 records in Appeal No. M-9300044 and 17 records in Appeal No. M-9300077. Further mediation was not possible and notice that an inquiry was being conducted to review the decisions of the Police was sent to the appellant, the Police and one individual whose interests might be affected by the disclosure of the records (the complainant). Representations were received from the Police, the appellant and the complainant.

## **THE RECORDS:**

The records at issue in the two appeals are described in Appendix "A" to this order. For ease of reference I have numbered the records in respect of M-9300044 and M-9300077 with the prefix A and B respectively. I have reviewed the records, and I find that the information in Records A5 and A17 is not responsive as it does not relate to the request and, accordingly, falls outside of the scope of this appeal. The Police have advised that Records B7, B8 and the second page of Record B6 were disclosed to the appellant in response to his request under M-9300044. Accordingly, I will not consider them in this order.

I also find there is duplication of records and that the Police have made different decisions with respect to access to the same records. I note that Record A1 is a duplicate of Record A15; that both Records A1 and A15 (severed) are duplicates of Record B16 (withheld in full); that Record A2 (severed) is a duplicate of Record B9 (withheld in full); that Record A3 is a duplicate of Record B3, both of which have been withheld in full; that Records A6 and A16 (severed) are duplicates of the first page of Record B6 (withheld in full); and that Record B14 is a duplicate of Record B12.

Where the Police have allowed partial access to the appellant in one appeal and withheld the same record in its entirety in the other appeal, I will only address those portions of the record which have not been disclosed. Therefore, my findings in respect of Records A1, A2, A3, A6, and B12 will apply equally to their duplicates.

Finally, the Police have claimed no discretionary exemptions for Records A9 and A19. However, I will examine these records to determine if any mandatory exemptions apply.

## **ISSUES:**

The issues to be addressed in this appeal are as follows:

- A. Whether the records 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 the personal information only of individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies.
- C. If the answer to Issue A is yes, and the records contain the personal information of both the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the records contains "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".

I have reviewed the information in the records at issue and, in my view, all of the information in the records qualifies as personal information for the purposes of section 2(1) of the Act.

I further find that Records A3, A4, A7, A8, A14, A18, B1, B15 and B17 contain personal information that relates solely to individuals **other** than the appellant. Of these records, the personal information in Records A3, A4, A7, A14, B1, B15 and B17 relates solely to the complainant.

Records A1, A2, A6, A10, A11, A12, A13, B2, B4, B5, B10, B11, B12 and B13 all contain personal information of both the appellant **and** other identifiable individuals, including the complainant.

The Police have not claimed any discretionary exemptions in respect of Records A9 and A19. I have reviewed these two records and find that they contain solely the personal information of the appellant. No mandatory exemptions apply to these records. Therefore, they should be disclosed to the appellant.

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

Under Issue A I determined that Records A3, A4, A7, A8, A14, A18, B1, B15 and B17 contain personal information relating solely to individuals other than the appellant.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances enumerated in sections 14(1)(a) through(f) of the Act. The appellant claims that the exception in section 14(1)(d), which expressly authorizes disclosure under an Act of Ontario or Canada, applies. The appellant states that the pre-trial disclosure provided for in criminal matters before the courts applies, by extension, under section 14(1)(d) of the Act. He states further that where records have been previously disclosed through the common law process, similar records should not be allowed to be withheld under the Act.

I do not agree with this proposition. The appellant has provided no reference to specific federal or provincial legislation which expressly authorizes the disclosure of the personal information in the records. In my view, the exception in section 14(1)(d) does not apply.

The only exception which has potential application in 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.

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 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 disclosure of personal information would constitute an unjustified invasion of personal privacy.

The Police submit that the presumptions in sections 14(3)(a), (b) and (d) apply to the information contained in the records. I will first consider section 14(3)(b), which 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;

In their representations, the Police indicate that all the personal information in the records was compiled as part of their investigation into an alleged assault involving the appellant and the complainant. I have carefully reviewed the records and I am satisfied that the personal information contained in Records A3, A4, A7, A8, A14, A18, B1, B15 and B17 was compiled by the Police during their investigation into a possible violation of the Criminal Code and/or the Police Act. Accordingly, I am of the view that the presumption contained in section 14(3)(b) applies to the personal information in these records.

The only way in which a section 14(3) presumption can be overcome is if the personal information 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 records in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption (Order M-170).

I have considered section 14(4) of the Act and find that none of the personal information in the records falls within the ambit of this provision.

With respect to section 16 of the Act, the Police assert that a compelling public interest does not exist in the disclosure of the records in which the personal information is contained. The complainant states that since the records relate to a criminal matter still before the courts, there exists, on the contrary, a compelling public interest in the protection of the records.

The appellant states that the purpose for which disclosure is required (an appeal of a criminal matter before the courts) and the nature of the records (investigation into the conduct of a police officer) necessarily means that a public interest exists in the disclosure of the personal information contained in the records.

In my view, the courts provide for a disclosure process for parties to a dispute, which is separate and independent of the statutory provisions of the Act. While I agree that an investigation of the conduct of a police officer would be a matter of public interest, I am not convinced that a **compelling public** interest exists in the disclosure of the particular records in which the personal information is contained, nor am I convinced that the public interest would be served by this disclosure. In my view, there is no compelling

public interest at stake in this appeal, only the appellant's "private interest" which relates specifically to the issues relating to his employment/professional conduct situation. Therefore, I find that section 16 does not apply.

The appellant also submits that sections 14(2)(d), (e) and (f) are relevant considerations. Section 14(2) contains a non-exhaustive list of factors for consideration by the Police, together with all other relevant circumstances, where it is found that none of the presumptions under section 14(3) are applicable. I have already found that the presumption in section 14(3)(b) applies to the records and in light of the determination in Order M-170, the factors listed in section 14(2) would not be sufficient to rebut the section 14(3)(b) presumption already established above.

Accordingly, I find that the disclosure of the personal information in Records A3, A4, A7, A8, A14, A18, B1, B15 and B17 would constitute a presumed unjustified invasion of the personal privacy of other individuals, including the complainant. Therefore, the mandatory exemption in section 14 of the Act applies to exempt these records from disclosure. It is, therefore, not necessary for me to consider the application of sections 14(3)(a) and (d).

**ISSUE C: If the answer to Issue A is yes, and the records contain the personal information of both the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies.**

Under Issue A I determined that Records A1, A2, A6, A10, A11, A12, A13, B2, B4, B5, B10, B11, B12 and B13 all contain the personal information of both the appellant and other individuals.

Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exceptions to this general right of access, one of which is found in section 38(b) of the Act.

This section of the Act introduces a balancing principle. Where, as in the present case, the records contain the personal information of the appellant as well as other individuals, the Police must look at the information and weigh the requester's right of access to his own personal information against the rights of other individuals to the protection of their personal privacy. If the Police determine that disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, then section 38(b) gives the Police the discretion to deny the requester access to his own personal information.

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal

information, the only situation under section 38(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

Section 14(2), (3) and (4) of the Act provide guidance in determining if disclosure of personal information would constitute an unjustified invasion of personal privacy.

The Police have claimed that the presumption afforded by section 14(3)(b) also applies to the records containing the personal information of the appellant and other individuals as **all** the records at issue in this appeal were compiled a result of the same investigation and subsequent prosecution. I have carefully reviewed the personal information in Records A1, A2, A6, A10, A11, A12, A13, B2, B4, B5, B10, B11, B12 and B13. I find that my analysis under Issue B above and the presumption in section 14(3)(b) applies equally to these records. Accordingly, the disclosure of the information contained in them would constitute a presumed unjustified invasion of the personal privacy of the other identifiable individuals.

Section 38(b) is a discretionary exemption. I have reviewed the representations of the Police regarding their exercise of discretion to deny access to the records. I find nothing improper in the manner in which that discretion was exercised and would not alter this determination on appeal.

### **ORDER:**

1. I uphold the decision of the Police not to disclose Records A1, A2, A3, A4, A6, A7, A8, A10, A11, A12, A13, A14, A18, B1, B2, B4, B5, B10, B11, B12, B13, B15 and B17.
2. I order the Police to disclose Records A9 and A19 in their entirety to the appellant within fifteen (15) days of the date of this order.
3. In order to verify compliance with this order, I order the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2, **only** upon request.

Original signed by: \_\_\_\_\_

Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ May 11, 1994



## APPENDIX "A"

RECORD NUMBER	PAGE NUMBER	DUPLICATE	DESCRIPTION
A1	027	A15, B16	Use of force report
A2	033	B9	Witness statement
A3	036 - 042	B3	Hospital record and physician's report
A4	043		Physician's account
A5	077		Page from a notebook
A6	080	A16, B6	Internal memorandum
A7	088		Page from notebook
A8	100		Letter
A9	192		Certificate
A10	374		Internal memorandum
A11	375		Internal memorandum
A12	436		Internal memorandum
A13	440		Witness statement
A14	445		CPIC print-out
A15	453	A1, B16	Use of force report
A16	462	A6, B6	Internal memorandum
A17	511		List of names and telephone numbers
A18	520		Internal memorandum
A19	528		Commendation report
B1	023		Synopsis of witness statement
B2	102		Forensic report
B3	159 - 165	A3	Hospital records and physician's report
B4	172		Forensic report

RECORD NUMBER	PAGE NUMBER	DUPLICATE	DESCRIPTION
B5	174 - 175		Handwritten notes
B6	218 -219	A6, A16	Internal memorandum
B7	220		Synopsis of witness statement
B8	221		Synopsis of witness statement
B9	263	A2	Witness statement
B10	264 - 265		Witness statement
B11	266 - 267		Witness statement
B12	268 - 269	B14	Witness statement
B13	270 - 271		Witness statement
B14	272 - 273	B12	Witness statement
B15	282		Medical information release form
B16	306	A1, A15	Use of force report
B17	312		Lawyer's report