



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-395

Appeal M-9400307

Guelph Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested from the Guelph Police Services Board (the Police) the portions of certain records which were withheld from him in response to a previous access request. The Police rely on the following exemptions in denying access to this information:

- invasion of privacy - sections 14(1)(f), 14(3)(b)
- law enforcement - section 8(2)(a).

A Notice of Inquiry was provided to the appellant, the Police and the appellant's estranged spouse. Because some of the records appeared to contain the personal information of the appellant, the Notice of Inquiry raised the possible application of sections 38(a) and (b). In response to the Notice of Inquiry, representations were received from all parties.

The records at issue consist of parts of the following documents:

Record 1 (pages 2, 3 and 4 as numbered by the Police): Supplementary Report dated August 29, 1991;

Record 2 (page 5 as numbered by the Police): General Occurrence Report dated September 2, 1991; and

Record 3 (page 6 as numbered by the Police): Supplementary Report dated September 2, 1991.

All of these records were prepared by members of the Police. For the sake of clarity, I will refer to the parts of the records which are at issue as "the undisclosed portions" of the records.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where 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 carefully reviewed all the records at issue in this appeal to determine whether they contain personal information and, if so, to whom the personal information relates.

I find that Records 1 and 3 contain the personal information of the appellant and other individuals. However, the undisclosed portions of these records contain the personal information of other individuals only.

Record 2 contains only the personal information of individuals other than the appellant.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information. I will consider the possible application of section 38(b) to Records 1 and 3.

However, where a record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits an institution from releasing this information. I will consider the possible application of section 14(1) to Record 2.

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. This is true whether the exemption under consideration is the one provided by section 14(1) or by section 38(b).

Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Police submit that the presumption contained in section 14(3)(b) (information compiled and identifiable as part of an investigation into possible violations of law) applies to the undisclosed portions of all the records. Therefore, the Police submit, disclosure of this information would constitute a presumed unjustified invasion of the personal privacy of individuals other than the appellant.

Previous orders of this agency have determined that investigations of alleged violations of the CriminalCode qualify as investigations into a possible violation of law for the purposes of section 14(3)(b) (Orders M-6, M-198 and M-317). These orders have also established that section 14(3)(b) only requires that there be an investigation into a **possible violation** of law and the fact that criminal charges have not been laid by the Police does not negate the applicability of this section. I agree with these determinations and adopt them for the purposes of this appeal.

The appellant argues that there exists a compelling public interest in the disclosure of the undisclosed portions of the records and that the public interest override set out in section 16 applies. Section 16 explicitly provides that it can override the exemption in section 14, but it does not mention section 38(b). However, Order P-541 established that section 16 may also apply to the exemption in section 38(b). Accordingly, I will consider the possible application of section 16 to any information which I find to be exempt under section 14 or 38(b).

I have carefully reviewed the records and the representations and I make the following findings:

- (1) All of the undisclosed parts of the records were compiled and are identifiable as part of an investigation into a possible violation of law, and the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to all of them.
- (2) Section 14(4) of the Act does not pertain to this information.
- (3) There is no compelling public interest in the disclosure of the undisclosed portions of the records which would clearly outweigh the purpose of the exemption. The records are concerned with investigations into possible violations of law which do not affect the public at large. Accordingly, I find that section 16 does not apply in the circumstances of this appeal.
- (4) I find that the release of the undisclosed portions of Records 1 and 3 would constitute an unjustified invasion of the personal privacy of individuals other than the appellant, and therefore this information is exempt under section 38(b).
- (5) I find that the release of the undisclosed portion of Record 2 would constitute an unjustified invasion of personal privacy and therefore this information is exempt under section 14(1).

Because of the way I have dealt with this issue it is not necessary for me to consider the application of sections 8(2)(a) and 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
John Higgins
Inquiry Officer

_____ September 29, 1994