



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-418

Appeal M-9400333

Thunder Bay 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 Thunder Bay Police Services Board (the Police) received a request for access to information related to an investigation of a specific incident involving the appellant.

The Police located records responsive to the request and denied access in part, relying on the following exemptions:

- danger to safety or health - section 13(1)
- invasion of privacy - section 14(1)

The records to which the Police denied access, in whole or in part, consist of witness statements, occurrence reports and correspondence and are listed in Appendix "A" to this order.

A Notice of Inquiry was provided to the appellant and the Police. A Notice of Inquiry was also provided to the complainant and a witness (the affected persons). 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) of the Act. Representations were received from all parties.

PRELIMINARY ISSUES:

The representations of one of the affected persons submit that sections 8(1)(b), (d) and (f) of the Act apply to the records. Sections 8(1)(b), (d) and (f) are discretionary exemptions that may be claimed by the Police. The Police have not cited these sections as the basis for denying access to any of the records.

In Order P-257, former Assistant Commissioner Tom Mitchinson considered the raising of exemptions by an affected person as follows:

As a general rule, with respect to all exemptions other than sections 17(1) and 21(1) [of the provincial Freedom of Information and Protection of Privacy Act, the equivalent of sections 10(1) and 14(1) of the Act], it is up to the head to determine which exemptions, if any, should apply to any requested record.

The former Assistant Commissioner further determined that it was only in a limited context where it became evident that disclosure of a record would affect the rights of an individual or where the institution's actions would be clearly inconsistent with the application of a mandatory exemption provided by the Act that an affected person could raise an exemption which has not been claimed by the institution. I agree with this reasoning and adopt it for the purposes of this appeal. In the circumstances of this case, I find that it is not necessary for me to consider the arguments of the affected person with respect to sections 8(1)(b), (d) and (f) of the Act.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual.

The Police, the appellant and the complainant agree that the records contain personal information. I have reviewed the information in the records and I agree that it qualifies as personal information under section 2(1) of the Act. I find also that all of the personal information relates to both the appellant **and** the affected persons.

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 Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in making this determination under 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 (Order M-170).

If none of the presumptions contained in section 14(3) apply, the institution 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.

In their representations, the Police indicate that several of the presumptions listed under section 14(3) of the Act apply to the information in the records:

- medical history - section 14(3)(a)
- investigation into a possible violation of law - section 14(3)(b)
- employment history - section 14(3)(d)

I will first consider the possible application of section 14(3)(b) of the Act.

The Police submit that the presumption contained in section 14(3)(b) (information compiled and identifiable as part of an investigation into a possible violation 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 Criminal Code qualify as investigations into a possible violation of law for the purpose of section 14(3)(b) of the Act (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 submits that section 14(2)(d) of the Act applies and access to the records is necessary for the fair determination of his rights with respect to a proceeding launched under the Human Rights Code. As I have indicated above, the only way that a presumption under section 14(3) 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 in the records (Order M-170).

The appellant has also raised the proper application of section 4(2) to the records. The key issue in section 4(2) of the Act is one of reasonableness. A reasonable section 4(2) severance must provide the requester with information that is responsive to the request and, at the same time, protect the confidentiality of the portions of the record covered by the exemption.

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

- (1) All of the records were compiled and are identifiable as part of an investigation into a possible violation of law, i.e. the Criminal Code, and the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to all of them.
- (2) I have considered the application of 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 raised the application of section 16 of the Act.
- (3) None of the submissions provided by the appellant to support disclosure of the records are sufficient to rebut the presumption in section 14(3)(b) (Order M-170).
- (4) I find that the disclosure of the records would constitute an unjustified invasion of the personal privacy of individuals other than the appellant and the records are, therefore, properly exempt from disclosure under section 38(b) of the Act.
- (5) I find that section 4(2) has been properly applied.

Because of the way I have dealt with this issue, it is not necessary for me to consider the application of the other presumptions claimed under section 14(3) or sections 13(1) and 38(a) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ November 4, 1994

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER	DOCUMENT PAGE NUMBER	DESCRIPTION	WITHHELD IN WHOLE OR IN PART	EXEMPTIONS CLAIMED
1	1-2	Occurrence Reports	Withheld in part	13, 14(2)(f) and (h), 14(3)(a), (b) and (d)
2	3	Supplementary Report	Withheld in part	13, 14(2)(f) and (h), 14(3)(a), (b) and (d)
3	4	Supplementary Report	Withheld in part	13, 14(2)(f) and (h), 14(3)(a), (b) and (d)
4	5	Supplementary Report	Withheld in part	13, 14(2)(f) and (h), 14(3)(a), (b) and (d)
5	6	Witness statement	Withheld in part	14(2)(h) and 14(3)(b)
6	7	Letter to the Police	Withheld in whole	13, 14(2)(f) and (h), 14(3)(b) and (d)
7	8-11	Witness statement	Withheld in whole	13, 14(2)(f) and (h), 14(3)(a), (b) and (d)
8	15-16	Witness statement	Withheld in part	13, 14(2)(f) and (h), 14(3)(b) and (d)
9	17	Supplementary witness statement	Withheld in whole	13, 14(2)(f) and (h), 14(3)(b) and (d)