



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-443**

**Appeal M-9400331**

**Regional Municipality of York 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 Regional Municipality of York Police Services Board (the Police) received a request for access to all records relating to an investigation involving the requester. The request was submitted to the Police by the requester's solicitor who also acts on behalf of the requester in connection with an ongoing matrimonial dispute.

The Police located 56 pages of records as well as a microcassette tape recording which were responsive to the request. The Police denied access to the tape recording and to 43 pages of records, in whole or in part, relying on the following exemption contained in the Act:

- invasion of privacy - section 14(1).

The records to which the police denied access, in whole or in part, consist of witness statements, interview notes, police notebook entries and a tape recording of a witness interview. The requester appealed the decision to deny access to these records.

A Notice of Inquiry was provided to the appellant and the Police. Because many of the records at issue appear to contain the personal information of the appellant and other individuals, the Notice of Inquiry raised the possible application of section 38(b) of the Act. Representations were received from the Police only.

Following receipt of its representations, the Police decided that a portion of the record previously described as non-responsive (lines 34 through 40 on page FI0006 ) was, in fact, responsive to the request and would be disclosed to the appellant. Accordingly, I order that portion of page F10006 be disclosed to the appellant.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

The Police claim the application of section 38(b) of the Act to exempt from disclosure all of the records with the exception of page FI0012. The Police submit that section 14(1) of the Act applies to this page only.

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

The Police submit, and I concur, that all of the records, except page FI0012, contain the personal information of the appellant **and** other identifiable individuals.

Page FI0012 is a drawing prepared by one of the individuals who was interviewed by the Police and, although the drawing itself does **not** contain the personal information of the appellant, I am satisfied that it

comprises an integral part of the investigating officer's notes of his interview of this individual (pages FI0008 through FI0011). Those notes **do** contain personal information of the appellant as well as that of another individual.

Having carefully reviewed all the pages at issue in this appeal, I find that **all** of the pages of the records at issue in this appeal contain the personal information of both the appellant **and** other identifiable individuals.

Section 38(b) of the Act introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives him the discretion to deny access to the personal information of the requester.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates in the context of section 38(b). Where one of the presumptions found in section 14(3) applies to personal information found in a record the only way such a presumption 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.

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 personal information at issue. The Police submit, therefore, that the disclosure of the personal information would represent a presumed unjustified invasion of personal privacy of individuals other than the appellant.

Having reviewed the representations of the Police and the records, I have made the following findings:

- (1) The personal information contained in the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act.
- (2) None of this information falls within the ambit of section 14(4). Nor has the appellant submitted that section 16 of the Act applies to this personal information.
- (3) Accordingly, the personal information contained in the records is exempt from disclosure under section 38(b).

## **ORDER:**

1. I uphold the decision of the Police not to disclose the records at issue, with the exception of lines 34 through 40 on page F10006 which are to be disclosed to the appellant within thirty-five (35) [IPC Order M-443/January 16,1995]

days of the date of this order, but not earlier than the thirtieth (30th) day following the date of this order.

2. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ January 16, 1995