



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-437

Appeal M-9400615

Niagara Regional 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 requester asked the Niagara Regional Police Services Board (the Police) for access to all records relating to an incident in which he was involved.

The Police identified an 11-page arrest report as the record that was responsive to the request. The Police decided, however, to deny access to this document in its entirety based on the following exemptions contained in the Act:

- invasion of privacy - section 14(1)
- law enforcement - sections 8(1) and 8(2)

The requester appealed this decision to the Commissioner's office.

During the mediation stage of the appeal, counsel for the appellant indicated that he only wished to receive that part of the report which pertained to an alleged assault on his client. This information is contained on pages 9 to 11 of the record.

A Notice of Inquiry was provided to the Police, the requester/appellant and one individual whose name was referred to in the report. Since the record in question also contains the personal information of the appellant, the parties were asked to provide additional submissions on the application of section 38(b) of the Act (invasion of privacy) to the information at issue. Representations were received from the Police and the appellant through his counsel.

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. I have reviewed the arrest report and find that it contains the personal information of the appellant and one other named individual.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government 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.

Under this provision, 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.

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. Section 14(3) lists the types of information whose disclosure is presumed to constitute such an invasion.

Once it has been shown that a section 14(3) presumption applies to the personal information at issue, the presumption can only be overcome where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act (the public interest override provision) applies to the facts of the case. A presumption cannot be rebutted by a combination of the factors set out in section 14(2) of the Act.

In their representations, the Police submit that the presumption against disclosure contained in section 14(3)(b) of the Act (information compiled and identifiable as part of an investigation into a possible violation of law) applies to the contents of the arrest report. They indicate that, as a result of their investigation, an individual was charged with assault under the Criminal Code and that this matter is presently before the courts.

Counsel for the appellant states that his client has filed an application with the Criminal Injuries Compensation Board (the Board) as a result of this incident. He further submits that his client requires the police report in order to fully present his case to the Board. Counsel goes on to state that, absent such documentation, the appellant's rights may be detrimentally affected. Counsel has thus implicitly raised the application of section 14(2)(d) of the Act (information relevant to a fair determination of the appellant's rights) as a factor weighing in favour of disclosing the personal information.

Based on a careful review of the evidence before me, I have made the following findings:

- (1) The personal information found in the arrest report was compiled and is identifiable as part of an investigation into a possible violation of the Criminal Code. On this basis, the release of this information would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act.
- (2) Based on the test articulated for the application of section 14(2)(d) in previous orders, I have not been presented with sufficient evidence to indicate that this consideration is relevant to the facts of this appeal. Even if I had found this provision to be applicable, a section 14(2) factor which favours disclosure cannot overcome a section 14(3) presumption which otherwise applies to the personal information at issue.
- (3) I find that section 14(4) does not apply to the personal information at issue. In addition, counsel for the appellant has not claimed that section 16 of the Act applies to the facts of this case.
- (4) The result is that the disclosure of the personal information contained in the record would constitute an unjustified invasion of personal privacy and is properly exempt from disclosure under section 38(b) of the Act.

Because of the manner in which I have resolved this appeal, it is not necessary for me to consider the other exemptions which the Police have raised.

Finally, I would note that should the appellant decide to continue with his compensation claim, the Board has a number of mechanisms which it may employ to obtain information relevant to the adjudication of a case.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ December 30, 1994