



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-454

Appeal M-9400490

Durham 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 Durham Regional Police Services Board (the Police) received a request for access to a specified Incident Report. The incident related to an attack by a dog, which caused serious injuries to a young girl. The request was submitted by counsel for the girl and her mother (the appellants).

Partial access was granted to the record. The Police rely on the following exemption to deny access to the parts which were not disclosed:

- invasion of privacy - section 14(1).

The appellants, by their counsel, filed an appeal from this decision to deny access. The letter of appeal indicates that access to the names and address of the dog's owners are not required, and accordingly, the parts of the record which contain this information are not at issue in this appeal. I have highlighted these passages on the copy of the record which is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order. These parts of the record should **not** be disclosed.

A Notice of Inquiry was sent to the Police, the appellants, the owners of the dog, and the owner of a kennel where the dog was taken after the incident. Because the record appeared to contain the personal information of the appellants, the Notice of Inquiry also raised the possible application of section 38(b) of the Act. This section provides an exemption relating to unjustified invasions of privacy for records which contain the requester's own personal information.

DISCUSSION:

PERSONAL INFORMATION

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.

I have reviewed the record at issue. The record contains personal information which relates to both appellants.

In addition, I find that the some of the information which has been withheld from disclosure qualifies as the personal information of other individuals, including the owners of the dog.

Several undisclosed parts of the record contain information pertaining to a commercial kennel where the dog was taken after the incident. Both the Police and the owner of the kennel submitted representations to the effect that disclosure of this information would be an unjustified invasion of the owner's personal privacy under sections 14(1) and/or 38(b) of the Act. However, I will only be able to consider whether that is the case if I determine that the information actually constitutes the kennel owner's personal information as defined in section 2(1).

Many previous orders have held that information about businesses, including partnerships and sole proprietorships, does not qualify as personal information. For example, in Order 16, former Commissioner Sidney B. Linden made the following comments in this regard:

The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make this clear.

Former Commissioner Linden went on to state in Order 113 that:

It is, of course, possible that in some circumstances, information with respect to a business entity could be such that it only relates to an identifiable individual, that is, a natural person, and that information might qualify as that individual's personal information.

In Order P-364, former Assistant Commissioner Tom Mitchinson found that detailed information pertaining to farming operations carried out for profit by two individuals was the sort of circumstance contemplated by former Commissioner Linden in Order 113. In the appeal under consideration in Order P-364, the records contained detailed information about the condition and potential value of assets which were owned by the business but also, in effect, by the individuals in question.

In this appeal, the information pertaining to the business consists of the name, address and telephone number of the kennel, the name of one of the operators of the kennel, and information about an incident which occurred in the course of conducting the business of the kennel. In my view, this information relates to the ordinary operations of a business. By contrast, the information at issue in Order P-364 had the potential to provide information about the assets of individuals. Because of the nature of the information relating to the kennel business which appears in the record, I find that it does not fall within the category of information contemplated by former Commissioner Linden in the passage just cited from Order 113.

With regard to the address and telephone number, the Police's representations indicate that the owner objected to disclosure of this information at the request stage on the basis that the address is also her home address. It has been previously held that, even where a request relates to business activities, the home address of an individual engaged in business is personal information (Order M-39). However, in my view, the situation is quite different where the home address is also the address of the business, particularly where (as in this case) the activities of the business relate to the subject matter of the request.

For all these reasons, I find that the information in the records pertaining to the kennel business is not personal information. Accordingly, it cannot be exempt from disclosure under either section 14(1) or 38(b). As no other exemptions have been claimed, and no mandatory exemption applies, this information should

be disclosed.

INVASION OF PRIVACY

I have found that the record contains the personal information of both appellants. For this reason, my analysis of whether disclosure of personal information pertaining to other individuals (including the owners of the dog) would be an unjustified invasion of their personal privacy will be based on section 38(b) of the Act (Order M-352).

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 determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. 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 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.

The representations submitted by the Police state that the investigation referred to in the records related to a possible violation of the Dog Owners' Liability Act and the by-laws of the Town of Ajax. Accordingly, it is clear that the personal information pertaining to individuals other than the appellant was compiled and is identifiable as part of an investigation into a possible violation of law. For that reason, the presumed unjustified invasion of personal privacy contained in section 14(3)(b) of the Act applies.

The appellant cites section 14(2)(d) in support of his argument that this information should be disclosed. However, it has been previously established that a factor or combination of factors under section 14(2) is not sufficient to rebut a presumption under section 14(3) (Order M-170). Since sections 14(4) and 16 do not apply, I find that disclosure of the personal information which has been withheld from disclosure, and which pertains to individuals other than the appellant, would be an unjustified invasion of personal privacy. Accordingly, this information is exempt under section 38(b).

I have highlighted the parts of the record which are exempt on the copy of the record which is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order.

ORDER:

1. I uphold the decision of the Police to deny access to the parts of the record which are highlighted on the copy of the record which is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Police to disclose the record to the appellants in its entirety, except the portions which are highlighted on the copy of the record which is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order, within thirty-five (35) days after the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
3. 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 appellants pursuant to Provision 2.

Original signed by: _____
John Higgins
Inquiry Officer

_____ January 31, 1995