



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-497

Appeal M-9500006

Regional Municipality of Ottawa-Carleton Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Ottawa Police Services Board (now the Regional Municipality of Ottawa-Carleton Police Services Board) (the Police) received a request for access to records related to an alleged sexual assault complaint. The requester, a police officer, was the subject of the complaint.

The Police notified the person who made the complaint of the request. This person objected to disclosure of the records, and the Police denied access to the records pursuant to the following exemptions:

- law enforcement - sections 8(2)(a) and 38(a)
- personal privacy - sections 14 and 38(b)

The requester appealed the decision of the Police, and a Notice of Inquiry was sent to the appellant, the person who made the complaint (the affected person) and the Police. Representations were received from the affected person and the Police.

The records at issue in this appeal consist of a general occurrence report, a document outlining the follow-up investigation and a witness statement.

DISCUSSION:

PERSONAL PRIVACY

The Act defines personal information, in part, as recorded information about an identifiable individual. Having reviewed the records and the representations, I find that the records contain the personal information of the appellant, the affected person, and a number of other individuals.

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 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. 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.

The Police submit that disclosure of the personal information would be a presumed unjustified invasion of the personal privacy of the affected person and other individuals referred to in the records as the information

contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)). As a result of the investigation, no charges were laid.

I have reviewed the evidence before me and I make the following findings:

- (1) The information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law to determine if criminal charges were warranted. The presumption in section 14(3)(b) only requires that there be an investigation into a **possible** violation of law. Therefore, the fact that no criminal charges were laid does not negate the applicability of section 14(3)(b) (Order P-237). Accordingly, the presumed unjustified invasion of personal privacy in section 14(3)(b) applies.
- (2) Section 14(4) does not apply to the information and the appellant has not raised the possible application of section 16 of the Act.

Accordingly, I find that disclosure of the personal information contained in the records would constitute an unjustified invasion of the personal privacy of the affected person and other individuals and is properly exempt from disclosure under section 38(b) of the Act, and 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: _____
Holly Big Canoe
Inquiry Officer

March 24, 1995