



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-567

Appeal M-9500242

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 Niagara Regional Police Service (the Police) received a request for access to a "General Incident Report" dated February 3, 1995 in relation to their File No. 95-11545. The Police rely on the following exemption in denying access to the record:

- invasion of privacy - section 38(b)

A Notice of Inquiry was provided to the appellant, the Police and an individual who provided the Police with the information contained in the record (the affected person). Representations were received from the Police only.

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 information contained in the record, and I find that it satisfies the definition of personal information. In my view, the majority of the personal information relates to the appellant, while the remainder relates to both the appellant and the affected person.

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 another individual 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 can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is that section 16 of the Act applies to the personal information.

In their representations, the Police rely on the following presumption found in section 14(3) of the Act:

- personal information compiled and identifiable as part of an investigation into a possible violation of law (section 14(3)(b))

Having reviewed the representations and the record, I have made the following findings:

- (1) The record was compiled as part of an investigation into a possible violation of law. Accordingly,

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the disclosure of the personal information which relates to the affected person would constitute a presumed unjustified invasion of the personal privacy of the affected person under section 14(3)(b).

- (2) None of the personal information contained in the record falls under section 14(4) and the appellant has not raised the possible application of section 16 of the Act.
- (3) I find that the disclosure of those portions of the record which relate to both the affected person and the appellant would constitute an unjustified invasion of the personal privacy of the affected person and that this part of the record is exempt from disclosure under section 38(b) of the Act. This information consists of the section entitled "Victim/Complainant" on the first page of the record and information on the first and second pages of the record which would reveal the gender of the affected person as well as that which describes the affected person's relationship to the appellant.
- (4) The remainder of the personal information, which relates to the appellant, is not exempt under section 38(b) of the Act, and should be disclosed to the appellant.

ORDER:

1. I uphold the decision of the Police to refuse to disclose the section entitled "Victim/Complainant" on the first page of the record, and information on the first and second pages of the record which would reveal the gender of the affected person as well as that which describes the affected person's relationship to the appellant.
2. I order the Police to disclose the remainder of the record to the appellant 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 disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

July 14, 1995