



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

# **ORDER M-569**

**Appeal M-9500209**

**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 Services Board (the Police) received a request for access to records regarding the operation of a specified business in the City of Port Colborne. The Police granted partial access to the records, relying on the following exemptions to deny access:

- law enforcement - sections 8(1)(a), (f) and 8(2)(a)
- invasion of privacy - section 14.

The requester appealed the decision of the Police. The records remaining at issue in this appeal are two one-page letters, dated June 13, 1993 and April 14, 1994 respectively, from the Regional Municipality of Niagara Health Services Department.

A Notice of Inquiry was provided to the appellant, the Police and an individual who's interests may be affected by the outcome of this appeal (the affected person). Representations were received from the Police only.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

I have not received any representations on this issue. However, as section 14 of the Act is a mandatory exemption and the Police did rely upon this section in their decision to deny access I am obliged to consider its application in the circumstances of this appeal.

I have reviewed the information contained in the records and, in my view, this information pertains to the operation and conduct of a business at a specified business address in the City of Port Colborne. The person to whom the letters are addressed is an official of that business and would have received the letters in his professional capacity. It has been established in a number of previous orders that information relating to individuals acting in their professional capacity does not qualify as personal information. Therefore, I find that the information contained in the records does not satisfy the definition of personal information and, consequently, section 14 of the Act does not apply in the circumstances of this appeal.

### **LAW ENFORCEMENT**

Sections 8(1)(a) and (f) of the Act provide:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (f) deprive a person of the right to a fair trial or impartial adjudication;

The purpose of the exemptions contained in section 8(1) is to provide the Police with the discretion to

preclude access to records in circumstances where disclosure of the records could reasonably be expected to result in one of the harms set out in this section. The Police bear the onus of providing sufficient evidence to establish the reasonableness of the expected harm.

Other than stating that there is the possibility that the law enforcement matter might be ongoing, the Police have not provided me with sufficient evidence to demonstrate that there exists a reasonable expectation that the harms envisioned by sections 8(1)(a) and/or (f) would occur should this information be disclosed. Therefore, I find that the records do not qualify for exemption under sections 8(1)(a) or (f) of the Act.

Section 8(2)(a) of the Act provides:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In order for a record to qualify for exemption under section 8(2)(a) of the Act, the Police must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[See Order 200 and Order P-324]

In order to satisfy the first part of the test (i.e. to be a report), a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

Having reviewed the records, I am not satisfied that they qualify as "reports" within the meaning of section 8(2)(a) of the Act and, therefore, I find that section 8(2)(a) does not apply.

**ORDER:**

1. I order the Police to disclose the records at issue in their entirety to the appellant within thirty-five (35) days after the date of this order but not before the thirtieth (30th) day after 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: \_\_\_\_\_

Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ July 18, 1995