



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

ORDER M-612

Appeal M_9500373

Port Hope 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 Port Hope Police Service (the Police) received a request for access to any witness statements taken by the Police with respect to a motor vehicle accident which occurred on March 17, 1989. The Police located the responsive records and denied access to two witness statements in their entirety, and another in part, relying on the following exemptions contained in the Act:

- law enforcement - section 8(2)(c)
- invasion of privacy - section 38(b)

A Notice of Inquiry was provided to the appellant, the Police and two individuals who provided statements as their interests may be affected by the disclosure of the information contained in the records (the affected persons). 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 records, and I find that it satisfies the definition of personal information. In my view, the personal information relates to the appellant and each of the two affected persons.

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.

If none of the presumptions contained in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

The Police submit that the disclosure of the information contained in the records would result in an unjustified invasion of the personal privacy of the affected persons. However, they have not made reference to any particular section of the Act in support of this statement.

It is my responsibility, when determining issues involving access to personal information, to consider all relevant sections of the Act. It is my view that section 14(3)(b) is applicable to the records which are at issue in this appeal. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

I have reviewed the representations of the Police and the records and make the following findings:

- (1) The records were compiled as part of an investigation into a possible violation of law, in this case, the Highway Traffic Act. Accordingly, the presumption under section 14(3)(b) applies to the personal information contained in the records.
- (2) None of the personal information contained in the records 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 the personal information in the records at issue would constitute an unjustified invasion of the personal privacy of the affected person and that the records are, accordingly, exempt from disclosure under section 38(b) of the Act.

Because of the manner in which I have disposed of this issue, it is not necessary for me to consider the application of section 8(2)(c) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Donald Hale
Inquiry Officer

October 13, 1995