



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

ORDER M-587

Appeal M_9500160

Hawkesbury Police Services Board



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NATURE OF THE APPEAL:

The Hawkesbury Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of an investigation report prepared by the Gloucester Police Services Board regarding the activities of a named police officer. The investigation was conducted pursuant to the Police Services Act at the request of the Chief of Police for the Town of Hawkesbury. The appellant is someone other than the officer under investigation. The Police denied access to the record based on the following exemptions:

- discretion to refuse requester's own information - section 38(a)
- right to fair trial - section 8(1)(f)
- invasion of privacy - sections 14 and 38(b)

During the course of mediation, the appellant excluded the latter part of the record dealing with the purchase of recording equipment from the scope of the appeal, and the Police disclosed a copy of a Warrant to Search, the Information to Obtain Search Warrant and Police General Orders.

A Notice of Inquiry was provided to the appellant, the Police and 11 individuals whose interests may be affected by the disclosure of the information at issue (the affected persons). Representations were received from the appellant and two affected persons. The Police did not submit representations.

DISCUSSION:

INVASION OF PRIVACY

The Act defines personal information, in part, as recorded information about an identifiable individual. Having reviewed the record and the representations, I find that the record contains the personal information of the appellant and 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.

Where, however, the record only contains the personal information of other individuals, and the disclosure of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits an institution from releasing this information.

In both of these situations, 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 the personal privacy of the individual to whom the information relates.

In my view, the record as a whole contains the personal information of the subject of the investigation. The record also contains the personal information of individuals other than the subject or the appellant. The appellant's personal information is found in a few discrete portions of the record. Accordingly, I will assess the application of section 14 to the information of individuals other than the appellant and the appellant's information under section 38.

PERSONAL INFORMATION OF INDIVIDUALS OTHER THAN THE APPELLANT

The Police have applied section 14 of the Act to the record at issue. One affected person submits that disclosure of the record would have a direct, negative effect on him personally (section 14(2)(e) - unfair exposure to pecuniary or other harm). The other affected person who responded submits that disclosure of the record would jeopardize the fairness of ongoing proceedings and would damage his and his family's reputation (section 14(2)(i)).

In my view, section 14(3)(b) must also be considered. 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 record and the representations and, in my view, the presumption in section 14(3)(b) applies to the personal information contained in the record as it was compiled and is identifiable as part of an investigation into a possible violation of law, namely the Police Services Act. 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. Sections 14(4) and 16 have no application in the circumstances of this appeal.

Accordingly, I find that the portions of the record which contain the personal information of individuals other than the appellant are exempt from disclosure under section 14(1) of the Act.

PERSONAL INFORMATION OF THE APPELLANT

In my view, section 14(3)(b) has equal application to the portions of the record which contain the personal information of the appellant and other individuals. As the requirements of a presumed unjustified invasion of privacy of individuals other than the appellant have been met, section 38(b) applies to exempt the appellant's personal information from disclosure.

Because I have found that the record in its entirety is exempt from disclosure pursuant to sections 14 and 38(b) of the Act, it is not necessary for me to address the application of sections 38(a) and 8(1)(f).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ August 24, 1995