



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

ORDER M-610

Appeal M_9500325

Hamilton_Wentworth 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 Hamilton-Wentworth Regional Police Services Board (the Police) received a request for a copy of a police report regarding a complaint of harassing and nuisance telephone calls. The Police granted partial access to the records, withholding all or parts of five "occurrence reports" (Records 5, 6, 7, 8 and 9). Records 5, 6 and 9 have been partially withheld and Records 7 and 8 have been withheld in their entirety. The Police rely on the following exemptions to deny access to these records:

- endanger life or safety - section 8(1)(e)
- security - sections 8(1)(h) and (i)
- law enforcement - section 8(2)(a)
- invasion of privacy - sections 14 and 38(b)
- discretion to refuse requester's own information - section 38(a)

A Notice of Inquiry was provided to the appellant, the Police and four individuals whose interests may be affected by the disclosure of the information contained in the records (the affected persons). Representations were received from the Police and three of the affected persons.

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, Records 5 and 6 contain the personal information of the appellant only and Records 7, 8 and 9 contain the personal information of the appellant and other identifiable 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 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 information contained in the records was compiled as part of an investigation into a possible violation of law, specifically the Criminal Code, and, therefore, disclosure would result in a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act.

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

1. The records contain information concerning an investigation into a possible violation of law under the Criminal Code and, therefore, disclosure of the personal information contained in Records 7, 8 and 9 would constitute a presumed unjustified invasion of privacy of the affected persons under section 14(3)(b) of the Act.
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. Accordingly, in the circumstances of this appeal, I find that, with respect to the personal information contained in Records 7, 8 and 9, disclosure would constitute an unjustified invasion of personal privacy pursuant to section 38(b) of the Act.

ENDANGER LIFE OR SAFETY

The Police claim that section 8(1)(e) applies to the records. This section states:

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

endanger the life or physical safety of a law enforcement officer or any other person;

The Police submit that the appellant may cause problems for the affected persons and that they may be subject to reprisal.

Section 8(1)(e) of the Act requires that I objectively assess the connection between the disclosure of the records at issue and the endangerment or threat which is contemplated. The Act requires me to determine if the **disclosure** of the records could **reasonably be expected** to **endanger** the life or physical safety of an individual.

One of the affected persons who has consented to disclosure of all information in the records relating to them with the exception of three unlisted telephone numbers. Having carefully reviewed the records and the submissions of all parties, it is my view that I have not been

provided with sufficient evidence to demonstrate that it is reasonable to expect that disclosure of the information contained therein would endanger the life or physical safety of a law enforcement officer or any other person. Therefore, I find that section 8(1)(e) of the Act does not apply.

SECURITY

The Police claim that the records are exempt under section 8(1)(h) of the Act. This section states:

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

reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;

In my view, section 8(1)(h) allows the Police to deny a requester access to a record where **either** the record at issue is itself a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation, **or** where the disclosure of the record could reasonably be expected to reveal another record which has been confiscated from a person by a peace officer, in accordance with an Act or regulation.

In their representations, the Police submit that information contained in the records was confiscated by a police officer employed by the Police as the result of the execution of a search warrant obtained under the authority of section 487 of the Criminal Code.

The Police have provided me with detailed representations outlining the circumstances of the confiscation of the information contained in the records, and the legal authority under which it was confiscated. Having carefully considered the representations of the Police, and the provisions of section 487 of the Criminal Code, I am satisfied that the Police have provided sufficient evidence to establish that the remaining parts of the narrative portion of Record 7, except for the first two lines, meets all the requirements to qualify for exemption under section 8(1)(h) of the Act. It is also my view, however, that none of the remaining parts of the records would reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation. I have highlighted the portions of this record which I have found to qualify for exemption under section 8(1)(h) on the copy of the records which has been forwarded to the Police with a copy of this order.

With respect section 8(1)(i) of the Act, I have found the information which the Police have claimed to be exempt under this section is either exempt under section 38(b) or qualifies for exemption under section 8(1)(h) and, therefore, it is not necessary for me to consider section 8(1)(i) of the Act.

LAW ENFORCEMENT

Records 5 to 9 represent part of an "occurrence report" prepared by a police officer. The Police claim that these records are exempt from disclosure under section 8(2)(a) of the Act, which states:

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 this section, the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act. The records relate to the investigation of a possible violation of the Criminal Code, which qualifies as a law enforcement matter within the meaning of section 2(1) of the Act.

In addition, the Police must establish that:

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

[Orders 200 and P-324]

I am satisfied that the records were prepared in the course of a law enforcement investigation by an agency which has the function of enforcing and regulating compliance with a law.

The Police submit that the records include the police investigation, actions, interviews, statements and opinions of various individuals, hence the records are a report as defined by the Act.

The word "**report**" is not defined in the Act. Based on previous orders, however, for a record to be a report, it 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 and the representations, I find that only Record 9 qualifies as a report as this is the only record which goes beyond communicating a fact-based update on the activities of the police officer in respect of this particular investigation. Accordingly, I find that the information which the Police have severed from Record 9 qualifies for exemption under section 8(2)(a).

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

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(a) of the Act, the Police have the discretion to deny access to records which contain an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 38(a) include the law enforcement exemptions claimed with respect to the records at issue.

I have previously found that the records contain the personal information of the appellant. Having found that the narrative portion of Record 7 (except for the first two lines) qualifies for exemption under section 8(1)(h) of the Act and the information which the Police have severed from Record 9 qualifies for exemption under section 8(2)(a), I find that these parts of the records are exempt under section 38(a).

ORDER:

1. I order the Police to disclose Records 5 and 6 in their entirety and Record 7 in accordance with the highlighted version of Record 7 which I have sent to the Police with a copy of this order, 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. The highlighted portions of the record should **not** be disclosed.
2. I uphold the decision of the Police not to disclose Record 8 and the severed parts of Record 9, as well as the highlighted portions of Record 7 as described in Provision 1.
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 records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ October 10, 1995