



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

ORDER M-682

Appeal M_9500574

Hamilton_Wentworth Regional Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

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 specified police incident report regarding allegations of possible fraud involving a public sector organization (the public body). The requester is an individual who had contact with the Police during the fraud investigation.

The Police located seven records which were responsive to the request. After obtaining the consent of one individual identified in some of the records, the Police disclosed some records to the requester and denied access to others, in whole or in part, relying on the following exemptions contained in the Act:

- law enforcement - section 8(2)(a)
- invasion of privacy - section 38(b)
- discretion to refuse requester's own information - section 38(a)

The responsive records are described as follows:

- | | | |
|----------|---|--------------------------------------------------------------------------------------------------------|
| Record 1 | - | one-page Occurrence Report - page 001 - access in full |
| Record 2 | - | four-page Supplementary Occurrence Report - pages 002-005 - partial access |
| Record 3 | - | two-page anonymous letter to public body - pages 006-007 - deny access in full |
| Record 4 | - | one-page letter to Regional Chairman - page 008 - access in full |
| Record 5 | - | one-page letter from Regional Chairman to Police - page 009 - access in full |
| Record 6 | - | one-page internal memorandum from one public body employee to another - page 010 - deny access in full |
| Record 7 | - | one-page Supplementary Occurrence Report - page 011 - partial access |

The requester appealed this decision, and also claimed that further responsive records should exist. During mediation of the appeal, an additional portion of Record 2, and Record 3 in its entirety were disclosed to the appellant. The scope of the appellant's request was clarified to include the police incident report and any Regional Council minutes and invoices relating to a specified purchase made by the public body. No additional responsive records were located by the Police.

The records which remain at issue in this appeal are the remaining portions of Record 2 (pages 003 and 005) and Record 7, and Record 6 in its entirety.

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

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 three remaining records, and I find that all of them contain information which satisfies the definition of personal information. In my view, Record 2 contains the personal information of the appellant, another identifiable individual, and the affected person, which was gathered by the Police in the context of the fraud investigation. Although Record 6 is an internal memorandum prepared in the employment context, it concerns individuals who were directly connected with the fraud investigation, and for that reason I find that it contains the personal information of the affected person and another identifiable individual. Record 7 contains the personal information of the same individuals included in Record 6.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by the Police, subject to a number of exceptions to this general right of access contained in that section. One such exception is section 38(b) which gives the Police discretion to deny access if disclosure would constitute an unjustified invasion of another individual's personal privacy. These sections are relevant to my determination of the proper treatment of Record 2, which includes the personal information of the appellant and other individuals.

Section 14(1) is a mandatory exemption which prohibits the disclosure of personal information to anyone other than the individual to whom the information relates, subject to a number of exceptions contained in that section. Although section 14(1) was not raised by the Police, because it is a mandatory exemption, I will determine whether this exemption applies to Records 6 and 7, which contain the personal information of individuals other than the appellant.

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. These sections are relevant to a determination under both sections 38(b) and 14(1). 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 Order M-444, Inquiry Officer John Higgins found that non-disclosure of information which had been provided to a police force by an appellant in the first place would contradict one of the primary purposes of the Act, namely the right of access to one's own personal information. A finding such as this could not be supported unless there was a compelling reason for non-disclosure. In this case, the undisclosed personal information of the affected person found on page 005 of Record 2 was provided to the Police by the appellant. Applying the reasoning

articulated by Inquiry Officer Higgins, I find that disclosure of the information which was provided by the appellant to the Police would not constitute an unjustified invasion of the personal privacy of the affected person. Therefore, section 38(b) does not apply to the undisclosed portions on page 005 of Record 2.

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. The representations provided by the affected person support this position.

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

1. Records 2, 6 and 7 contain information which was compiled as part of an investigation into a possible violation of law under the Criminal Code and, therefore, disclosure of the personal information contained on page 003 of Record 2, Record 6, and the remaining portion of Record 7 would constitute a presumed unjustified invasion of privacy of the affected person and other identifiable individuals under section 14(3)(b) of the Act.
2. None of the personal information contained in these 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 disclosure of the remaining portions of page 003 of Record 2 would constitute an unjustified invasion of the personal privacy of an identifiable individual pursuant to section 38(b) of the Act.
4. I find that disclosure of Record 6 in its entirety and the remaining portion of Record 7 would constitute an unjustified invasion of the personal privacy of the affected person and another identifiable individual pursuant to section 14(1) of the Act.

LAW ENFORCEMENT

As a result of my findings under sections 38(b) and 14(1), only the undisclosed portions of page 005 of Record 2 remain at issue and will be discussed in the context of the law enforcement exemption.

I have determined that Record 2 contains the personal information of the appellant. Under section 38(a) of the Act, the Police have discretion to refuse to disclose this information to the appellant if the law enforcement exemption provided by section 8 of the Act applies. The Police submit that Record 2 qualifies for exemption under section 8(2)(a), which reads as follows:

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;

Record 2 is a Supplementary Occurrence Report prepared by the Police during the course of an investigation into a possible violation of the Criminal Code, which clearly qualifies as a law enforcement matter within the meaning of section 2(1) of the Act.

In order to qualify for exemption under section 8(2)(a) the Police must establish that the record at issue is a "report".

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 Record 2 and the representations submitted by the Police, I find that it consists of an outline of the steps taken by the investigating officer during the course of the fraud investigation. In my view, the information contained in this record is mere observations and recordings of fact and is not a formal statement or account of the results of the investigation. Therefore, I find that Record 2 does not qualify as a "report", and the undisclosed portions of this record do not satisfy the requirements for exemption under section 8(2)(a). Therefore, the undisclosed portions of page 005 of Record 2 do not qualify for exemption under section 38(a) of the Act and should be disclosed to the appellant.

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which she is seeking and the Police indicate that further records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Police must provide me with sufficient evidence to show that they have made a **reasonable** effort to identify and locate records responsive to the request.

In this case, the request was for a specified police incident report. As a result of mediation efforts, the scope of the request was clarified in the Notice of Inquiry to include this report and any Regional Council minutes and invoices relating to a specified purchase made by the public body which was the subject matter of the fraud investigation.

In their representations, the Police describe the steps taken by them to identify all responsive records. This included a review of the file and speaking with the police officer who investigated the complaint. The Police also indicate that the appellant was contacted during the processing of the request to insure that all responsive records were identified. The Police submit that all reasonable steps to locate responsive records have been taken and that no further responsive records exist with respect to this request.

Having reviewed the representations of the Police, I am satisfied that the efforts made by the Police to determine whether they might have further records responsive to this request were reasonable in the circumstances.

ORDER:

1. I order the Police to disclose page 005 of Record 2 to the appellant by **February 9, 1996** but not before **February 5, 1996**.
2. I uphold the decision of the Police not to disclose Record 6 in its entirety, and the undisclosed portions of Record 2 and Record 7.
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: _____ January 5, 1996
Tom Mitchinson
Assistant Commissioner