



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

ORDER M-701

Appeal M_9500469

Hamilton_Wentworth Regional Police Services Board



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NATURE OF THE APPEAL:

The Hamilton-Wentworth Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information related to all complaints made against the requester. In particular, the requester sought access to the names of the complainants, a description of the complaints and a copy of the investigation information and reports. The Police denied access to the responsive records on the basis of numerous exemptions under the Act: sections 8(1)(a), (c), (d), (e), (g), (l), sections 8(2)(a), (c) and 38(a), sections 14(2)(e), (f), (h), (i), sections 14(3)(b), (d), (f), (g) and (h), section 38(b), section 10(1) and section 11(d).

The requester appealed the denial of access.

During mediation, the appellant narrowed the scope of the request to the name or names of individuals who had filed the complaint which lead to the investigation. As a result, the Police withdrew their claim to the exemptions provided by sections 8(1)(c) and (l), 10(1), 11(d), 14(3)(d), (f) and (g) of the Act.

Therefore, the information that remains at issue is the name or names of the complainants. Hereinafter, for ease of reference, I will refer to the information being sought as “the complainants’ names”.

The Police rely on the following exemptions under the Act to withhold access to the complainants’ names:

- law enforcement - sections 8(1)(a), (d) and (g) and sections 8(2)(a) and (c)
- endanger life or safety - section 8(1)(e)
- discretion to refuse requester’s own personal information - section 38(a)
- invasion of privacy - sections 14(1) and 38(b)

A Notice of Inquiry was sent by the Commissioner’s office to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have considered the information at issue. Previous orders of the Commissioner’s office have found that a name alone cannot be considered “recorded information **about** an identifiable individual” [emphasis added] (Order 27). However, where the name appears in the context of a

specific complaint filed by an individual, the name satisfies the definition of personal information under section 2(1) (Order P-387). On this basis, I find that the complainants' names qualify as their personal information. Further, because these names appear in the context of a complaint against the appellant, I find that this personal information relates to both the complainants and the appellant.

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 Police have the discretion to deny the requester access to that information.

INVASION OF PRIVACY

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 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.

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) of the Act, as well as all other considerations that are relevant to the case.

The Police claim that sections 14(2)(e), (f), (h) and (i) are relevant considerations. The Police also claim that the presumptions in sections 14(3)(b) and (h) of the Act apply to the complainants' names.

I will first consider the application of section 14(3)(b), which reads as follows:

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;

The Police submit that the complainants' names form part of the record of an investigation into a possible violation of the Criminal Code. The Police submit, therefore, that the complainants' names were compiled and are identifiable as part of that investigation. The Police acknowledge that the investigation is complete and that no charges were laid.

In his representations, the appellant has included written confirmation that the investigation has been completed and that no charges were laid. The appellant contends that while the information

obtained may be construed as part of the investigation, the names of the individuals requesting the investigation do not qualify for exemption under the wording of the section. The appellant appears to be saying that the names of the complainants were not “compiled” for the purposes of this section.

I have carefully considered the representations of the parties, together with the information at issue and the circumstances of this case. In my view, the fact that the investigation is complete and no charges have been laid does not negate the applicability of section 14(3)(b). The presumption only requires that there be an investigation into a possible violation of law (Orders P-237 and P-392).

In Order P-666, former Assistant Commissioner Irwin Glasberg considered the definition of the term “compiled” for the purposes of section 21(3)(b) of the provincial Freedom of Information and Protection of Privacy Act, which is identical to section 14(3)(b) of the Act. Former Assistant Commissioner Glasberg found that the ordinary meaning of “compiled” for the purposes of this section is to “collect, gather or assemble together”. He concluded that the presumption will apply as long as the personal information was, at some point in time, assembled or gathered together as part of the investigation. I agree with former Assistant Commissioner Glasberg’s approach and adopt it for the purposes of this appeal.

I find, therefore, that the complainants’ names were compiled and are identifiable as part of an investigation into a possible violation of law and the presumed unjustified invasion of personal privacy under section 14(3)(b) applies. I find that section 14(4) does not apply and the appellant has not raised the possible application of section 16 of the Act. As I have indicated previously, a finding of a presumption under section 14(3) cannot be rebutted by a factor or a combination of factors under section 14(2) (Order M-170).

Accordingly, disclosure of the complainants’ names would constitute an unjustified invasion of the personal privacy of individuals other than the appellant and is properly exempt under section 38(b) of the Act.

As I have found that the information is exempt under section 38(b), I need not consider the application of the other exemptions claimed by the Police.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

February 8, 1996