



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

# ORDER M-702

Appeal M\_9500024

Cornwall Police Services Board



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## NATURE OF THE APPEAL:

The Cornwall Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to an investigation undertaken into allegations of abuse at a group home which occurred in 1975 and 1976. The requester was one of the individuals whose allegations formed the basis for the investigation. The Police located a large number of responsive records and granted the requester access to some of them, in whole or in part, including two audio tapes of an interview with the requester recorded by the Police. Access to the remaining records was denied pursuant to the following exemptions contained in the Act:

- law enforcement - section 8(2)(a)
- invasion of privacy - sections 14 and 38(b)

The requester appealed the decision to deny access to the records and raised the possible application of section 16 of the Act, the public interest override, to the records. A Notice of Inquiry was provided to the appellant and the Police by the Appeals Officer. Representations were received from the appellant only.

The records which remain at issue consist of a large number of interview notes, witness statements, five audio tapes of interviews with individuals other than the appellant, correspondence, lists of names, log sheets, police officer notes, a search warrant application and the contents of a Crown brief, totalling approximately 692 pages. The records, in accordance with the numbering system used in Appendix B to the Notice of Inquiry, are numbered A1-A334, B1-B190 and C1-C278. I will continue to refer to the records in this fashion.

## DISCUSSION:

The Police have claimed the application of section 8(2)(a) of the Act for Records A225 to A298. These records consist of a search warrant application with several lengthy appendices, the actual search warrant granted, an affidavit in support of a motion to seal the search warrant application and the order sealing the search warrant information. Section 8(2)(a) 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 addition, for a record to qualify for exemption under section 8(2)(a) of the Act, the Police must satisfy each part of the following three part test:

1. the record must be a report; **and**

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

I find that Records A225 to A298 were prepared in the course of a law enforcement investigation by an agency (the Police) which has the function of enforcing compliance with a law.

I must now determine whether Records A225 to A298 qualify as a "report" within the meaning of section 8(2)(a). 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).

I cannot agree that Records A225 to A298 may be properly characterized as a report for the purposes of section 8(2)(a). As each part of the three part test referred to above must be met, I find that the information compiled in the search warrant application and the other documents which make up this portion of the records is not exempt from disclosure under section 8(2)(a).

## **PERSONAL INFORMATION**

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 records and make the following findings:

- (1) The five undisclosed audio tapes and Records A5-A7, A31-A40, A41-A45, A68, A70, A111-A121, A122-A126, A127, A132-A133, A134, A147-A150, A167-A176, A201-A202, A225-A298, A299, A300-A303, A326-A329, B1-B5, B8, B9, B19-B20, B22-B25, B41, B42-B44, B58, B59-B60, B76, B77, B87-B88, B89-B90, B91-B92, B93-B97, B98-B108, B109-B118, B119-B124, B125, B174-B181 and C1-C278 contain the personal information of the appellant and other individuals.
- (2) Records A2-A4, A99-A104, A105-A110, A128-A131, A135-A146, A151-A154, A155-A160, A161-A162, A163-A166, A177-A186, A187-A192, A193-A194, A195-A200, A203-A207, A208-A209, A210-A212, A213-A215, A216-A219, A220-A224, A304-A306, B18, B21, B26, B27-B29, B30, B31-B32, B33, B34, B35, B36, B37, B38-B40, B45, B46-B47, B48, B49-B50, B51, B52, B53, B54-B57, B61, B62-B63, B64, B65, B66, B67-B68, B69, B70-B71, B72, B73, B74, B75, B78, B79-B80, B81, B82, B83, B84-B85, B-86, B182-B184, B185-B189 and B190 contain only the personal information of individuals other than the appellant.
- (3) Records A1, A330-A332, B6-B7, B10, and the undisclosed portions of Record A63-A67 contain only the personal information of the appellant or information which was provided to the Police by the appellant. As no other exemptions have been claimed for these records, and no mandatory exemptions apply to them, they should be disclosed to the appellant.

## INVASION OF PRIVACY

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 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 appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to his or her own personal information, the only situation under section 38(b) in which he or she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

Where, however, the record only contains the personal information of other individuals, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 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 circumstances that are relevant to the appeal.

In its decision letter, the Police submit that the presumption in section 14(3)(b) applies to all of the records which remain undisclosed. This section reads:

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 records at issue and the representations submitted by the appellant and find that the records were compiled and are identifiable as part of an investigation into a possible violation of law. As such, their disclosure would result in an unjustified invasion of personal

privacy and the records are exempt from disclosure. The appellant has not raised the application of any of the exceptions to the exemption contained in section 14(4) and I find that they do not apply in this appeal.

## **PUBLIC INTEREST IN DISCLOSURE**

The appellant has raised the application of section 16, the public interest override, to the information contained in the records. This section states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (my emphasis)

In Order P-984, Inquiry Officer Holly Big Canoe examined the component parts of section 23 of the provincial Act, which is the equivalent of section 16 of the Act. She held that:

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

The appellant submits that there exists a compelling public interest in the disclosure of the records. The records document in graphic detail the abuse of wards of the Children's Aid Society in a group home for troubled children in 1975 and 1976. In addition, many of the statements taken by the Police contain other allegations of abuse against other group home staff, foster parents and parents. I find that there exists a compelling public interest in examining the child welfare system in this community, particularly the circumstances existing at the time the events giving rise to these allegations took place, in order to ensure that appropriate action has been taken.

I cannot agree, however, that this compelling public interest clearly outweighs the purpose of the privacy protection provisions of the Act. The harm which would result to a number of named individuals through public exposure of the events which are documented in the records far outweigh any public benefit which would be derived from their disclosure. I find, therefore, that as the second of the requirements have not been satisfied, section 16 does not apply to override the privacy protection exemptions contained in the Act.

## **ORDER:**

1. I order the Police to disclose Records A1, A330-A332, B6-B7, B10 and the undisclosed portions of Record A63-A67 by sending the appellant a copy no later than March 14, 1996 but not earlier than March 11, 1996.
2. I uphold the decision of the Police to deny access to the remaining records.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_

Donald Hale  
Inquiry Officer

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February 8, 1996