



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

ORDER M-737

Appeal M_9600009

Windsor Police Services Board



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NATURE OF THE APPEAL:

The Windsor Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of any records relating to the requester's former wife, step-son and two daughters.

The Police responded by informing the requester that the existence of any responsive records could neither be confirmed nor denied because disclosure would constitute an unjustified invasion of the personal privacy of the individuals named in the request (section 14(5) of the Act).

The requester (now the appellant) appealed the Police's decision.

This office provided a Notice of Inquiry to both the appellant and the Police. Representations were received from the Police only.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD

As noted above, the Police rely on section 14(5) as their basis for refusing to confirm or deny whether any responsive records exist. This section states:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 14(5), the Police are denying the requester the right to know whether a record exists, even if one does not.

For this reason, in relying on section 14(5) the Police must do more than merely indicate that the disclosure of the records would constitute an unjustified invasion of personal privacy. The Police must establish that disclosure of the mere existence or non-existence of the requested records would convey information to the requester, and that the disclosure of this information would constitute an unjustified invasion of personal privacy (Order M-328).

Accordingly, I will begin by considering whether disclosure of records of the type requested, if they exist, would constitute an unjustified invasion of personal privacy. If the answer to this question is yes, I will then consider whether disclosure of the existence or non-existence of records of the type requested would constitute an unjustified invasion of personal privacy.

An unjustified invasion of personal privacy can only result from disclosure of personal information. Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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.

Records of the nature requested, if they exist, would reveal that one or more of the individuals named in the appellant's request had been involved with the Police in law enforcement matters. I find that such information, if it exists, would qualify as the personal information of an individual or individuals other than the appellant.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether 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 institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

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 (section 14(3)(b)). The Police submit that if records which satisfy the requirements of this section exist, then access would be denied on the basis of this presumption. I find that disclosure of any such records, if they exist, would constitute a presumed unjustified invasion of personal privacy. Records of this type are not among those listed in section 14(4) and there is nothing to indicate that section 16 may be relevant in the circumstances of this appeal, so this presumption would not be rebutted.

Even if records exist which do not fit the requirements of the section 14(3)(b) presumption, they could be considered as highly sensitive, thereby raising section 14(2)(f) as a relevant consideration favouring privacy protection. The appellant has not submitted any representations, and I find that no factors favouring disclosure have been established. Section 14(2)(f) weighs in favour of privacy protection and, in my view, disclosure of responsive records, if they exist, would constitute an unjustified invasion of personal privacy.

I will now turn to the question of whether disclosure of the mere existence or non-existence of responsive records would constitute an unjustified invasion of personal privacy. The Police argue that it would.

I find that such disclosure would reveal personal information about identifiable individuals, namely, whether or not that they have been involved with the Police in law enforcement matters. In my view, part of the above analysis relating to disclosure of responsive records, if they exist, is equally applicable here. I find that disclosing the existence or non-existence of responsive records would constitute an unjustified invasion of personal privacy when balancing the consideration favouring privacy protection in section 14(2)(f) against the absence of any evidence of factors favouring disclosure.

Therefore, I find that the Police have established the requirements for the application of section 14(5) of the Act in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ March 20, 1996