



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

ORDER M-760

Appeal M_9500768

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

Under the Municipal Freedom of Information and Protection of Privacy Act (the Act), the appellant submitted a request to the Halton Regional Police Services Board (the Police) for records relating to an accusation against him. In effect, the request describes this accusation as an allegation that the appellant stalked a named individual (the affected person).

The police investigation found that the appellant was out of the country at the time of the alleged incident. The complainant was so advised and no incident report was created. The only responsive record is the relevant passages from the investigating officer's notebook. The Police granted partial access to this information, but denied access to parts of it on the basis of the following exemptions in the Act:

- invasion of privacy - section 14
- law enforcement - section 8(2)(c).

The appellant filed an appeal of this decision to deny access.

This office sent a Notice of Inquiry to the appellant, the Police and the affected person. Because the records appeared to contain the personal information of the appellant, the Notice of Inquiry raised the possible application of sections 38(a) and 38(b) of the Act. These sections provide exemptions which may apply to records containing an individual's own personal information.

In response to the Notice of Inquiry, the Police and the affected person submitted representations.

DISCUSSION:

INVASION OF PRIVACY

Section 2(1) of the Act defines personal information, in part, as "recorded information about an identifiable individual ...". I have reviewed the records to determine whether they contain personal information and, if so, to whom the personal information relates.

I find that the record contains personal information of the appellant and the affected person.

Both sections 14(1) and 38(b) provide exemptions intended to protect personal privacy. However, neither section 14(1) nor 38(b) can apply to information in a record which is exclusively the personal information of the requester (in this case, the appellant). I find that several of the undisclosed passages consist of such information. I have highlighted these passages on a copy of the record which I will send to the Freedom of Information and Privacy Co-ordinator for the Police with a copy of this order. These passages are **not** exempt under section 14(1) or 38(b).

I will now consider the remaining undisclosed 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.

Where, as in this case, the record contains the personal information of the individual who made the request, section 14(1) does not apply. Rather, in such a case, the “invasion of privacy” exemption to consider is section 38(b) (Order M-352).

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has 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 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 institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The affected person indicates that she opposes disclosure of any of her personal information.

The Police submit that the presumed unjustified invasion of privacy in section 14(3)(b) applies. This section states:

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 am satisfied that this presumption applies to the remaining information at issue, since it was clearly compiled and is identifiable as part of an investigation into a possible violation of law. The law in question is the Criminal Code.

As noted above, once a presumption in section 14(3) applies, the only way it can be rebutted is if section 14(4) or 16 applies. I find that the information under consideration here is not information to which section 14(4) applies. I also find that the so-called “public interest override” in section 16 does not apply, because the appellant has not raised this section and I have not been provided with any information to substantiate its application.

Therefore, I find that disclosure of the undisclosed information in the records (other than the highlighted information described above) would be an unjustified invasion of personal privacy and it is exempt from disclosure under section 38(b).

LAW ENFORCEMENT/DISCRETION TO DENY REQUESTER'S OWN INFORMATION

As previously indicated, 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.

Section 38(a) of the Act gives the Police the discretion to deny access to a record containing a requester's own personal information where certain listed exemptions, including section 8, would otherwise apply. The Police claim that section 8(2)(c) applies to the undisclosed information.

I have already exempted most of the withheld information under section 38(b). The exceptions are the parts of the officer's notebook highlighted on the copy of the record which I will send to the Freedom of Information and Privacy Co-ordinator with a copy of this order. In this discussion, I will only consider this highlighted information, which I have not previously found to be exempt.

In order to determine whether section 38(a) applies to this information, I will consider whether it qualifies for exemption under section 8(2)(c).

Section 8(2)(c) states:

A head may refuse to disclose a record,

that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability.

The affected person submits that the application of section 8(2)(c) is self-evident. Given the requirements to establish liability in the civil courts, I do not agree.

The Police submit that, if the undisclosed part of the record is "not disclosed via an access request, it would then be subpoenaed [by the appellant, presumably]. The release of this information would then put [a named individual] at risk of civil liability". In my view, this submission is insufficient to establish that disclosure could reasonably be expected to expose any individual to civil liability.

Accordingly, I find that these passages do not qualify for exemption under section 8(2)(c) and they are, therefore, not exempt under section 38(a).

ORDER:

1. I uphold the decision of the Police to deny access to the undisclosed parts of the record at issue, except the passages which are highlighted on a copy of the record which is being sent to the Freedom of Information and Privacy Co-ordinator for the Police with a copy of this order.
2. I order the Police to disclose the passages in the record which are highlighted on the copy of the record which is being sent to the Freedom of Information and Privacy Co-ordinator for the Police with a copy of this order, by sending a copy to the appellant on or before **May 31, 1996** but not earlier than **May 27, 1996**.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the record which is disclosed to the appellant in accordance with Provision 2.

Original signed by: _____

John Higgins
Inquiry Officer

_____ April 26, 1996