



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

ORDER M-762

Appeal M_9600034

Ottawa_Carleton Regional Police Services Board



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NATURE OF THE APPEAL:

The Ottawa-Carleton 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 a copy of an incident report involving an occurrence in which the appellant was involved. The Police located the requested records and denied access to them, in their entirety, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 8(2)(a) and (c)
- invasion of privacy - sections 14(1) and 38(b)

The appellant appealed the decision to deny access. A Notice of Inquiry was provided to the appellant, the Police and to three individuals whose rights might be affected by the disclosure of the records (the affected persons). Representations were received from the appellant, the Police and two of the affected persons. As the records appeared to contain the personal information of the appellant, the parties were asked to make representations on the possible application of section 38(a) of the Act to them.

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 records at issue in this appeal and find that they contain the personal information of the appellant and each of the three affected persons.

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 another individual 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 own personal information, the only situation under section 38(b) in which he can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's 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 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.

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), as well as all other considerations that are relevant in the circumstances of the case.

The Police submit that the information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law. If this is the case, the information falls within the presumption in section 14(3)(b) of the Act.

The appellant submits that the disclosure of the information contained in the records is necessary in order for him to re-establish his credibility and honour in his community. The appellant wishes to use the information contained in the records to assist him in clearing his name in the community and with the Police.

The affected persons who made submissions object to the disclosure of their personal information to the appellant. In effect, they argue that the incident which gave rise to the creation of the records is over and they do not wish to have it reopened.

I have carefully reviewed the representations of the parties and the records and have made the following findings:

1. The records contain information which was compiled and is identifiable as part of an investigation into a possible violation of law. The fact that no criminal proceedings were commenced does not negate the applicability of section 14(3)(b). The disclosure of the personal information which the records contain would, therefore, constitute a presumed unjustified invasion of privacy under section 14(3)(b) of the Act.
2. None of the personal information contained in the records falls under section 14(4) and the appellant has not raised the possible application of section 16 of the Act.
3. Accordingly, I find that the information contained in the records is exempt from disclosure under section 38(b) of the Act.

Because of the manner in which I have disposed of this issue, it is not necessary for me to address the application of sections 8(2)(a) and (c) or section 38(a) to the records.

ORDER:

I uphold the decision of the Police and dismiss the appeal.

Original signed by: _____

Donald Hale
Inquiry Officer

_____ April 29, 1996