



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

ORDER M-817

Appeal M_9600059

Orangeville Police Services Board



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NATURE OF THE APPEAL:

The appellant requested information from the Orangeville Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). This information relates to a named police officer (the officer). In particular, the appellant indicated that he was seeking access to records relating to a dog bite incident, an assault in which charges were laid against an individual, and any current or past complaints made against the officer.

The Police advised the appellant that the portion of his request pertaining to the assault charge was transferred to another institution under section 18 of the Act. The Police indicated that they had no records relating to the dog bite incident referred to in the request. With respect to records relating to any current or past complaints made against the officer, the Police acknowledged that the appellant had brought a complaint against the officer, but refused to confirm or deny the existence of any other records pursuant to sections 8(3) (law enforcement) and 14(5) (invasion of privacy).

The appellant appealed this decision. In his letter of appeal, the appellant expressed some concern about the manner in which the officer handled an incident involving his son.

During mediation, the appellant narrowed the scope of his appeal to the refusal of the Police to confirm or deny the existence of records pertaining to any current or past complaints made against the officer.

This office sent a Notice of Inquiry to the Police, the appellant and the officer. Representations were received from the officer and the Police in response to this Notice.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD

Section 14(5) of the Act provides the Police with the discretion to refuse to confirm or deny the existence of records responsive to the appellant's request. This section states that:

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.

As I indicated above, the portion of the request which is at issue in this appeal pertains to complaints made against the officer.

Previous orders have held that information about an employee does not constitute personal information where the information relates to that individual's employment or professional responsibilities or position. Where, however, the information involves an examination of the employee's performance or an investigation into his or her conduct, these references are considered to be the individual's personal information.

The Police indicate that, pursuant to the Police Services Act (the PSA), complaints against a police officer are to be recorded on forms provided by the Police Complaints Commissioner. Further, the Police state that the PSA mandates that these complaints are to be investigated by the individual Police Service's public complaints investigation bureau.

Records of the nature requested, if they exist, would reveal whether complaints had been made against the officer, which, in my view, would relate to an examination of the officer's performance or an investigation into his conduct. I find that such information, if it exists, would qualify as the personal information of the officer as defined by section 2(1) of the Act.

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.

The Police submit that records of the nature requested, if they exist, would concern themselves with investigation(s) under the PSA into complaint(s) made against the officer, and their disclosure would thus constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act. This section provides that:

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;

It has been established in a number of previous orders that records which are compiled in the course of an investigation under the PSA fall within the presumption provided by section 14(3)(b) (Orders P-285 and M-757). 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.

In regard to the second part of the analysis under section 14(5), the Police argue that disclosure of the mere existence or non-existence of responsive records would constitute an unjustified invasion of personal privacy.

I find that such disclosure would reveal personal information about the officer, namely, whether he had been the subject of complaints. In the circumstances of this case, I find that disclosing the existence or non-existence of responsive records would constitute an unjustified invasion of personal privacy.

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: _____
Laurel Cropley
Inquiry Officer

_____ August 8, 1996