



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

ORDER M-821

Appeal M_9600012

Hamilton_Wentworth Regional Police Services Board



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BACKGROUND:

The appellant's parents were murdered by a named individual (the accused). The appellant and his family filed a complaint about the conduct of the Hamilton-Wentworth Regional Police Services Board (the Police) during the course of the murder investigation which led to an internal police investigation. The appellant is currently involved in a civil litigation action against the Police.

NATURE OF THE APPEAL:

Counsel for the appellant requested information regarding this internal investigation from the Police pursuant to the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request sought access to all records relating to the events surrounding and following the initial arrest of the accused. The appellant is represented by counsel and any reference in this order to the appellant means the appellant as represented by counsel.

The Police located and identified a total of 622 pages. The Police granted access to 115 pages in their entirety and to four pages in part. The Police denied access to 172 pages and indicated that 331 pages were non-responsive to the request.

The appellant appealed the decision to deny access.

During mediation, the appellant clarified that he was seeking access to only those records related to the internal police investigation. The 331 pages which the Police found to be non-responsive consisted of the Crown brief. On this basis, the appellant agreed with the Police that these pages were not responsive to the request. The appellant also removed other records from the scope of his appeal since he had already received these records through the discovery process.

Accordingly, a total of 48 records remain at issue in this appeal. I note that there are duplicates of some pages which I have identified by highlighting the numbers in bold. My findings on the pages at issue will apply equally to their duplicates. The pages at issue in this appeal consist of the following:

Professional Standards Log - pages 1, 2 and 3 to which partial access was granted;

Memoranda and Statements to the Police Services Board (PSB) - pages 69-71, 73, 75, 76, 78, 79, 83, 85-87, 89-102, 110, 126, 127, 140 and 141 to which access was denied;

Canadian Police Information Central Data Bank (CPIC) computer printouts - pages 104 (**138**), 105 (**106**), 107, 108, 109, 112, 113 (**135**), 117 (**134**), 118 (**132**), 119 (**133**) and 139 to which access was denied;

Letter and PB investigative notes - pages 289, 290 and 291 to which access was denied.

The Police denies access to these records on the basis of the following exemptions in the Act:

- endanger life or safety - section 8(1)(e)
- law enforcement - sections 8(2)(a) and (c)
- invasion of privacy - section 14(1)
- relations with an agency of a government - section 9(1)(d)

This office provided a Notice of Inquiry to the appellant, the Police and 18 individuals, including the accused, whose interests could be affected by disclosure of the records (the affected persons). Representations were received from the appellant, the Police and 14 affected persons.

DISCUSSION:

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 I find that the information in the logs, memoranda and statements relate to the 18 police officers who participated in the internal investigation. I find that the records contain information regarding the whereabouts and activities of these individuals.

Previous orders of the Commissioner have found that information about an individual in his/her professional or employment capacity does not constitute that individual’s personal information. Where, however, the information involves an evaluation of the individual’s performance or an investigation into his or her conduct, the information is considered to be that individual’s personal information (Order P-771).

Accordingly, I find that the withheld information in the logs, memoranda, statements, letter and investigative notes qualifies as the personal information of the individuals referred to therein. I find also that the information in the CPIC records relates to the accused and other identifiable individuals and constitutes the personal information of these individuals. None of the personal information in the records at issue in this appeal relates to the appellant.

The Police have denied access to the CPIC records on the basis of section 9(1)(d). The Police have claimed sections 8(1), 8(2) and 14(1) apply to the remaining records. However, I have found that all the records contain personal information of individuals other than the appellant and I will therefore first consider whether the mandatory exemption in section 14(1) also applies to these records.

INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances.

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 the personal information in the logs, memoranda, statements and investigative notes fall within the presumption in section 14(3)(b) and that the letter falls within the ambit of the presumption in section 14(3)(d). These sections of the Act read as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (b) 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;
- (d) relates to employment or educational history.

The Police submit that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law, i.e. the Police Services Act.

I have reviewed the records together with representations of the parties. I find that the personal information in the logs, memoranda, statements and the investigative notes was compiled as part of an investigation into a violation of law and these records are exempt from disclosure pursuant to section 14(3)(b) of the Act. Based on the evidence before me, I find that the personal information in the letter and the CPIC records was also clearly compiled and is identifiable as part of the same investigation into a possible violation of the law. I find that section 14(4) does not apply and the appellant has not raised section 16 of the Act.

The appellant has raised the possible application of sections 14(2)(a), (b) and (d). Even if I were to find that these sections were relevant in the circumstances of this appeal, the Divisional Court's decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that the factors and considerations in section 14(2) cannot be used to rebut the presumptions in section 14(3).

Because of my findings in respect of the records, it is not necessary for me to consider the application of sections 8(1), 8(2) or 9(1) claimed by the Police for these records.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ August 16, 1996