



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

ORDER M-812

Appeal M_9600138

Hamilton_Wentworth Regional Police Services Board



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NATURE OF THE APPEAL:

The Hamilton-Wentworth Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for copies of two specific investigation reports involving the requester. The Police located the two reports and, pursuant to section 21 of the Act, notified two individuals who might have an interest in disclosure of the records (the affected persons).

Both affected persons objected to the disclosure of any of their personal information contained in the records. The Police subsequently provided the requester with partial access to the records. The Police denied access to the remaining portions of the records on the basis of the following exemptions in the Act:

- invasion of privacy - section 38(b)
- law enforcement - section 8(2)
- discretion to refuse requester's own information - section 38(a).

The requester appealed this decision.

During mediation of the appeal, the Police disclosed one further portion of the records to the requester (now the appellant).

This office sent a Notice of Inquiry to the Police and the appellant. Both parties made representations in response to this Notice.

The records at issue consist of the withheld portions of:

- a one-page occurrence report together with seven supplementary report pages (Record 1), and
- a one-page occurrence report together with four supplementary report pages (Record 2).

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 information in the records and I find that it satisfies the definition of "personal information" in section 2(1) of the Act and that this information relates to the appellant and other identifiable individuals.

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 the other individual's personal privacy, the Police have 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 Police 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 Police indicate that they disclosed as much of the records as they could without releasing information subject to an exemption. The Police submit that disclosure of the remaining personal information in the records would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b). This section provides:

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.

The appellant submitted extensive representations which provide some background regarding the two events and which express his views in connection with both the allegations and the police investigations. In particular, he describes the effect these investigations have had on him and his family.

With respect to section 14(3)(b), the appellant states that he was never charged with anything as a result of these investigations. Moreover, he considers the allegations which were brought against him to be malicious. In this regard, he believes that section 14(3)(b) should not apply.

In my view, the appellant's concern that the allegations which led to the police investigations were malicious raises a relevant consideration in the circumstances of this appeal. The appellant also raises the possible application of the following factors in section 14(2) which he believes are relevant in the circumstances of this appeal:

- the individual to whom the information relates will be exposed unfairly to pecuniary or other harm - section 14(2)(e);
- the personal information is highly sensitive - section 14(2)(f); and
- the personal information has been supplied in confidence - section 14(2)(h).

I have reviewed the personal information in the records and I make the following findings:

- (1) This personal information was compiled and is identifiable as part of an investigation into a possible violation of law (the Criminal Code). The presumption in section 14(3)(b) only requires that there be an investigation into a possible violation of law. Therefore, in this case, the fact that the appellant was not charged does not negate the applicability of this section (Order P-223). Accordingly, the presumed unjustified invasion of personal privacy under section 14(3)(b) applies.
- (2) Even if I were to find that the appellant's arguments raised a relevant factor or consideration favouring disclosure under section 14(2), 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).
- (3) Section 14(4) does not apply to the information and the appellant has not raised the possible application of section 16 of the Act.
- (4) Accordingly, disclosure of the personal information would constitute an unjustified invasion of personal privacy of individuals other than the appellant and this information is exempt from disclosure under section 38(b) of the Act.

Because of this decision, it is not necessary for me to consider the possible application of the exemptions in sections 8(2) and 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ July 29, 1996