



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

ORDER M-795

Appeal M_9500779

York Regional Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The York Regional Police Services Board (the Police) received a request for copies of records relating to the drowning death of a young man (the deceased). The request was made by the family of the deceased. The family is particularly interested in obtaining the details surrounding the death of their son and brother. The family is represented in this appeal by the brother of the deceased and I shall refer to the brother as the appellant throughout this order.

The Police located records responsive to this request and determined that the interests of seven individuals (the affected persons) would be affected by disclosure of the information. The Police notified these seven affected persons pursuant to section 21 of the Act. One affected person consented to disclosure, two objected to disclosure and four did not respond to the Police.

The Police granted partial access to the records. Access was denied, in part, to the remaining records based on the exemption in section 38(b) of the Act (invasion of privacy). Along with their decision letter, the Police attached a detailed index of the records responsive to the request. The Police refer the appellant to this index for the explanation of the severances which were made to the records. The index indicates that, in addition to severances under section 38(b), portions of the records have been withheld because they are not responsive to the request.

The appellant appealed the decision of the Police to deny access. During mediation, the appellant indicated that he was not seeking access to any information which was not responsive to his request. This information, which is contained in portions of police officers' notes, relates to other events which occurred during these officers' tours of duty, and is found on pages 8, 13 _ 16, 24, 25, 32, 76 and 79 - 86. The portions of these pages which are non-responsive are not at issue in this appeal and should not be disclosed.

A Notice of Inquiry was sent by this office to the Police and the appellant. Representations were received from both parties.

RECORDS AT ISSUE:

The records at issue in this appeal consist of the withheld portions of:

- a complaint history detail
- police officers' notes
- a computer generated Incident Report
- witness statements (which include statements, interview reports, witness video statement warnings and monitor's rough notes, and a video tape of the interviews)
- documentation from the Centre of Forensic Sciences (which includes a Case Submission form and a report).

The Police have identified the records by page number. In order to understand the nature of the information contained in the records, I have assigned a record number to groups of pages. For example, the records consisting of pages 8 - 13 are the notes made by one police officer. I have grouped these pages together and assigned the record number 2 to them. Appendix "A" sets out the pages identified by the Police as responsive to this request, with their corresponding record numbers, and a brief description of each record.

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, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the 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 all of the records contain the personal information of the deceased and one or more individuals other than the appellant (and/or his family).

I note that section 2(2) of the Act states that:

Personal information does not include information about an individual who has been dead for more than thirty years.

In this case, the deceased drowned in July, 1995. Because this is less than thirty years, I must conclude that section 2(2) does not apply.

The Police submit that all of the records also contain the personal information of the appellant (which also includes other family members, but not the deceased). I do not agree with this characterization of the personal information in the records.

As I indicated above, I have grouped pages of the records into identifiable records, for example, the notes made by each police officer, the statement given by each witness, and the incident report in its entirety. In reviewing each record, I find that the following records do not contain the personal information of the appellant (or his family): Records 7, 8, 9, 10, 11, 12, 13, 16, 17, 19, 20, 21 and 22.

Once a record is found to contain personal information of individuals other than the appellant, section 14(1) of the Act provides that this information shall not be disclosed unless one of the exceptions listed in section 14(1) applies. The only such exception which could apply here is section 14(1)(f), which permits disclosure if it would not constitute an unjustified invasion of personal privacy.

However, where a record contains the appellant's personal information and the Police decide not to disclose all or part of the record to prevent an unjustified invasion of someone else's privacy, section 14 does not apply (Order M-352). In such a case, section 38(b) gives the Police the discretion to deny access where disclosure would be an unjustified invasion of privacy.

Therefore, for the records which contain the appellant's personal information, I will decide whether section 38(b) applies. For the other records, I will decide whether section 14(1) applies.

In both these situations, 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 submit that the presumption in section 14(3)(b) of the Act applies to the records. 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.

The Police have provided me with information regarding the investigation of the disappearance and drowning of the deceased. I am satisfied that this investigation was undertaken to determine whether there were any violations of the law in connection with this incident. In my view, this supports the application of the presumption in section 14(3)(b). Moreover, it has been previously held that, in order to qualify as an investigation into a possible violation of law, it is not required that charges or other legal proceedings were actually initiated as a result of the investigation (Order P-223). I find, therefore, that the presumed unjustified invasion of personal privacy provided by section 14(3)(b) applies to all of the records.

In his representations, the appellant expresses the sorrow and sense of loss experienced by his family at the death of their son and brother. He indicates that a complete accounting of the events which occurred the night his brother died would assist the family in coming to terms with his death. The appellant states further that information which they did receive regarding his death has created a picture of the deceased which the family believes is uncharacteristic. This has created some confusion on the part of the family and has raised a number of questions in their minds. Finally, the appellant notes that he and his family are as much victims of this tragedy as is his brother. In this regard, he states:

All we want from these individuals are the facts as they relate to my brother. Facts that will help fill in the blanks and explain the actions of my brother on July 15, 1995 that lead to his death. This we do not believe to be an unjustified invasion of personal privacy.

While I sympathize with the appellant's desire to better understand the circumstances of his brother's death, I must uphold the decision of the Police in this appeal. Even if I were to find that the appellant's arguments raised a relevant consideration under section 14(2) in balancing his rights to the personal information in the records against that of other individuals 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).

As I previously indicated, a presumption in section 14(3) may only be overcome by the application of section 14(4) or section 16 of the Act. The information does not fall within the types of information listed in section 14(4). The appellant has not raised the possible application of section 16, and I find that it does not apply.

Because the presumption in section 14(3)(b) applies, the exception in section 14(1)(f) has not been established for those records which do not contain the appellant's personal information, and I find that they are exempt under section 14(1). Similarly, for records which do contain the appellant's personal information, the application of this presumption means that disclosure would be an unjustified invasion of personal privacy, and these records are exempt under section 38(b). Accordingly, all the records at issue are exempt under one or the other of these sections. In Appendix "A", I have indicated under which section the records at issue are exempt.

ORDER:

I uphold the decision of the Police to withhold the records at issue.

Original signed by: _____
Laurel Cropley
Inquiry Officer

June 25, 1996

APPENDIX “A”

INDEX OF RECORDS AT ISSUE

RECORD NUMBER(S)	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS APPLICABLE TO EACH RECORD
1	1 - 7	Complaint history detail	38(b)
2	8 - 13	police officer’s notes	38(b)
3	14 - 15	police officer’s notes	38(b)
4	16 - 24	police officer’s notes	38(b)
5	25 - 32	police officer’s notes	38(b)
6	33 - 40	computer generated incident report	38(b)
7	41	zone alert	14(1)
8	42 - 45	witness statement	14(1)
9	46, 52, 58, 62	witness video statement warnings	14(1)
10	47, 53, 59, 63	interview reports	14(1)
11	48 - 51	video statement (monitor’s rough notes)	14(1)
12	54 - 57	video statement (monitor’s rough notes)	14(1)
13	60 - 61	video statement (monitor’s rough notes)	14(1)
14	64 - 66	video statement (monitor’s rough notes)	38(b)
15	67	video tape recording of interviews	38(b)
16	68 - 71	interview report	14(1)
17	72 - 75	interview report	14(1)
18	77	Centre of Forensic Sciences Case Submission form	14(1)
19	78	Centre of Forensic Sciences Report	14(1)
20	79 - 82	police officer’s notes	14(1)
21	83 - 86	police officer’s notes	14(1)