



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

# **ORDER M-826**

**Appeal M\_9500452**

**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 access to records relating to a specific investigation undertaken by the Police. The investigation resulted in the conviction of a Police Officer on a charge of conveying false information under section 372(1) of the Criminal Code. The requester is counsel to the persons to whom the false information related, and I will refer to the clients in this order as the appellants.

The Police located a large number of responsive records and, pursuant to section 21 of the Act, notified 14 individuals (the affected persons) whose rights might be affected by their disclosure, seeking their representations as to why the records should not be disclosed. Eight individuals consented to the disclosure of the information contained in the records. Two of the affected persons consented to the disclosure of some of the information contained in the records and two others objected to the disclosure of any information. The remaining affected persons, the Police Officer convicted of the offense and his wife, did not respond to the notification.

Following its review of the representations of the affected persons, the Police decided to disclose portions of the responsive records to the appellants. The Police denied access to the remaining records, in whole or in part, relying on the application of the following exemptions contained in the Act:

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

The appellants appealed the decision to deny access to the undisclosed records. Within the time frames set forth in the Confirmation of Appeal, the Police also claimed the application of the following additional exemptions:

- section 8(1)(h) - security
- section 9 - relations with other governments
- sections 38(a) and (b) - discretion to refuse requester's own information and invasion of privacy

A Notice of Inquiry was provided to the appellants, the Police and to six affected persons. Representations were received from the appellants, the Police and two affected persons. The appellants also advised that they were not seeking access to the non-responsive portions of police officers' notebooks, duplicate copies of documents or the names or other personal identifiers of individuals which may have been severed from the records.

The records at issue consist of the Occurrence Report and other documents compiled by the Police during their investigation (Pages 1-20), the Crown brief (Pages 21-124) and documents relating to the internal investigation of the Police officer's conduct (Pages 125-242). Many of

the records at issue are duplicates and, as the appellants have indicated that they are not interested in receiving duplicate copies of documents, I have listed those records where the Police have provided more than one copy of the same document:

Record 1 (Page 189), Record 15 (Pages 29-134) Records 56-57 (Pages 92-93, 118-119, 161 and 162), Records 94-95 (Pages 97-98), Record 21 (Page 126), Record 22 (Page 127), Record 129 (Page 24), Record 25 (Page 130), Record 26 (Page 131), Records 27-28 (Pages 132-133), Record 29 (Page 134), Records 30-37 (Pages 136-142), Records 38-40 (Pages 143-145), Records 42-44 (Pages 147-149), Record 46 (Page 151), Record 47 (Page 152), Records 48-49 (Pages 153-154), Records 50-51 (Pages 155-156), Record 52 (Page 157), Records 53-55 (Pages 158-160), Records 59-70 (Pages 164-175), Record 71 (Pages 176 and 188), Records 72-76 (Pages 177-181) and Records 77-78 (Pages 182-183, 187 and 188).

Accordingly, the duplicate copies of the original documents are no longer at issue.

## **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 information contained in the records and make the following findings:

1. Records 4, 7, 9, 15, 16, 30-37, 52 and 91 contain only the personal information of the appellants.
2. Records 1, 14, 18-20, 21, 27, 28, 38-40, 42-44, 50, 51, 53-55, 56, 57, 59-70, 72-76, 77, 78, 79, 80, 81, 82, 83, 87, 88, 89, 90, 94-96, 99, 100, 101, 102, 104-106 and 190-242 contain the personal information of the appellants and one or more of the affected persons.
3. Records 5, 6, 11, 13, 22, 24, 25, 26, 46, 47, 48-49, 71, 184 and 185 contain only the personal information of individuals other than the appellants.
4. Records 2, 3 and 125 do not contain any personal information.

### **INVASION OF PRIVACY**

Section 36(1) of the Act allows individuals access to their own personal information held by a government institution and, the appellants, therefore, have a general right to access to those records which contain their personal information.

Section 38 sets out exceptions to this right. Where a record contains the personal information of both the appellants and other individuals, section 38(b) of the Act allows the Police to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy.

Where, however, the records contain only the personal information of individuals other than the appellants, as is the case with Records 5, 6, 11, 13, 22, 24, 25, 26, 46, 47, 48, 49, 71, 184 and 185, section 14(1) prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply to these records is section 14(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy."

Disclosing the types of personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the Police can disclose the personal information only if it falls under section 14(4) or if section 16 applies to it.

If none of the presumptions in section 14(3) apply, the Police must consider the factors listed in section 14(2) as well as all other relevant circumstances.

The Police submit that the presumptions in sections 14(3)(a), (b), (d) and (g) apply to various portions of the records. These sections state:

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

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (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;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

All of the records at issue were compiled and are identifiable as part of an investigation into a possible violation of law. The records relating to the investigation and prosecution of the police officer, as well as those which address the internal Police investigation into his activities fall within the presumption contained in section 14(3)(b). Portions of the information compiled by the Police in the course of these investigations originated from several sources which do not have a law enforcement mandate as defined in section 2(1) of the Act. In Order P-666, former Assistant Commissioner Irwin Glasberg determined that the term "compiled" in section 21(3)(b) (which is the equivalent provision in the Provincial act to section 14(3)(b) of the Act) is to be

interpreted in accordance with its ordinary dictionary meaning which is to “collect, gather or assemble together.” I adopt this interpretation for the purpose of this appeal.

Having reviewed the records and the representations of the parties, I am satisfied that the personal information contained in the records was compiled by the Police as part of an investigation of a possible violation of section 372(1) of the Criminal Code and various sections of the Police Services Act. On this basis, I conclude that the disclosure of this information would constitute a presumed unjustified invasion of the personal privacy of the affected persons and should not be disclosed to the appellants.

I have considered the application of section 14(4) of the Act and find that none of the personal information contained in the records fall within the scope of this provision. In addition, the appellants have not argued the possible application of section 16 of the Act.

The information contained in several of the records which I have found to fall within the section 14(3)(b) presumption was, however, provided to the Police by the appellants. In Order M-444, Inquiry Officer John Higgins made the following comments about a similar situation where records containing information supplied to the Police by a requester were found to be exempt under the section 14(3)(b) presumption:

However, it is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. In this case, applying the presumption to deny access to information which the appellant provided to the Police in the first place is, in my view, a manifestly absurd result. Moreover, one of the primary purposes of the Act is to allow individuals to have access to records containing their own personal information, unless there is a compelling reason for non-disclosure. In my view, in the circumstances of this appeal, non-disclosure of this information would contradict this primary purpose.

It is possible that, in some cases, the circumstances would dictate that this presumption should apply to information which was supplied by the requester to a government organization. However, in my view, this is not such a case. Accordingly, for the reasons enumerated above, I find that the presumption in section 14(3)(b) does not apply. In the absence of any factors favouring non-disclosure, I find that the exemption in section 38(b) does not apply to the information at issue in the records.

I adopt the approach taken by Inquiry Officer Higgins. Records 4, 9, 30-37, 56 and 57 contain information which was supplied by the appellants and to deny access to these records would bring about an absurd result. Again, in the absence of any factors favouring non-disclosure, I find that the records are not exempt under section 38(b) and should be disclosed to the appellants.

As no other exemptions have been claimed for Record 125 and it does not contain any personal information, it should also be disclosed to the appellant.

## RELATIONS WITH OTHER GOVERNMENTS

The Police claim the application of section 9(d) of the Act to Records 2 and 3, which consists of a two-page CPIC printout. This section states:

A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

an agency of a government referred to in clause (a), (b) or (c);

The Police have made detailed representations on the application of this section to the CPIC printout at issue. Because of the nature of the submissions and the confidential information which they relate, I am unable to describe them in any detail. I am satisfied, however, that the disclosure of the information contained in the records could reasonably be expected to reveal information which was received in confidence from the RCMP, an agency of the Government of Canada. As such, I find that Records 2 and 3 are properly exempt from disclosure under section 9(d).

Because of the manner in which I have disposed of the records at issue in this appeal, it is not necessary for me to address the application of sections 8 and 38(a) of the Act to them.

### ORDER:

1. I order the Police to disclose Records 4, 9, 30-37, 56, 57 and 125 to the appellants by providing each of them with a copy by **October 1, 1996** but not before **September 26, 1996**.
2. I uphold the decision of the Police to deny access to the remaining records.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with copies of the records disclosed to the appellants pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_  
August 27, 1996