



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

# **ORDER M\_841**

**Appeal M\_9600214**

**Niagara Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Niagara Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for records relating to the criminal record of a named individual (the affected person).

The Police identified 19 responsive groups of records comprising 285 pages and denied access to them, claiming the application of the following exemptions contained in the Act:

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

The appellant appealed the decision to deny access. This office notified the Police, the appellant and the affected person of the appeal and provided the parties with the opportunity to submit representations on the issues identified in the Notice of Inquiry. All three parties submitted representations.

## **RECORDS:**

The responsive records include police officers' notes, several Crown Briefs, memoranda, witness statements, will-say statements, correspondence between the Crown and the affected person's counsel and various other documents relating to the charges against him.

## **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. Having reviewed the records, I find that they contain information which is primarily about the affected person. The records, therefore, contain his personal information. The records also contain the personal information of a number of other identifiable individuals, not including the appellant.

Section 14(1) of the Act prohibits the Police from disclosing personal information except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It 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 presumption in section 14(3)(b) applies. 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;

With regard to section 14(3)(b), the Police state that the personal information contained in the records was collected as a result of investigations into possible violations of law.

The appellant submits that the disclosure of the personal information is relevant to a fair determination of his rights (section 14(2)(d)).

Having reviewed the records and the representations of the Police, I am of the view that the personal information contained in the majority of the records was compiled and is identifiable as part of several investigations into possible violations of law by the affected person. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established for those records which were compiled during the investigations in possible violations of law by the affected person.

Even if I were to find that the consideration referred to by the appellant is relevant and compelling, the Divisional Court's decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that considerations under section 14(2) cannot be used to rebut the presumptions in section 14(3). Section 14(4) has no application in these circumstances and the appellant has not argued that section 16 applies. I find that these records are, therefore, exempt under section 14 of the Act.

Also included in the responsive records are Probation documents (Record Groups 3, 11 and 19), Informations (Record Groups 4, 6, 7, 8, 11, 14 and 16), Undertakings (Record Groups 6, 7 and 11) and a Recognizance of Bail (Record Group 7). In Order M-734, I found that records which are created following an investigation into a possible violation of law cannot fall within the ambit of the presumption in section 14(3)(b). I held that:

The records at issue are documents which are generated upon the **completion** of an investigation at which time charges are laid. The Information and Summons are not compiled as part of the investigation but rather these documents initiate the court proceedings which follow the investigation.

Similarly, I find that Probation documents, Informations, Undertakings and a Recognizance of Bail are post-investigation records which cannot properly be described as having been "compiled" during the course of an investigation into a possible violation of law. Accordingly, these documents are not covered by the presumption in section 14(3)(b).

The parties to the appeal who are resisting disclosure have not specifically addressed the possible application of any of the factors listed in section 14(2) to the post-investigation records. As noted above, the appellant submits that the consideration provided by section 14(2)(d) is relevant to the circumstances of this appeal. The affected person makes reference to several unlisted considerations which favour the protection of his privacy, however. Because of the sensitive nature of these submissions, I am unable to address them fully in the body of this order.

I have reviewed the submissions of the affected person and the appellant, as well as the post-investigation records described above. I find that, balancing the privacy interests of the affected person against the right of the appellant to obtain access, the affected person's privacy rights outweigh the appellant's right to the information. Again, section 14(4) has no application in these circumstances and the appellant has not argued that section 16 applies. Because of the sensitive nature of much of the information contained in the records, I find that their disclosure to the appellant would result in an unjustified invasion of the affected person's privacy.

Because of the manner in which I have disposed of the records under section 14, it is not necessary for me to address the application of section 8 to them.

**ORDER:**

I uphold the decision of the Police.

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

\_\_\_\_\_ September 20, 1996