



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

ORDER M-814

Appeal M_9600094

Ottawa_Carleton Regional Police Services Board



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NATURE OF THE APPEAL:

The Ottawa-Carleton 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 all information relating to the requester for a specified period of time. The Police granted partial access to the responsive records. Access to the remaining records was denied by the Police on the basis of the following exemptions in the Act:

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

The requester appealed the decision to deny access to the remaining records.

The records that remain at issue in this appeal consist of the following:

- an occurrence report withheld in its entirety (Record 1)
- an occurrence report withheld in part (Record 2)
- a two-page letter (Record 3)

This office sent a Notice of Inquiry to the appellant, the Police and two individuals who might have an interest in disclosure of the records (the affected persons). Representations were received from the Police and one of the 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 information in the records and I find that it qualifies as "personal information". I find that the personal information in Record 1 relates to both the appellant and the affected person who provided representations. I find that the personal information in Records 2 and 3 relates to the appellant and other identifiable individuals.

LAW ENFORCEMENT/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Under section 38(a) of the Act, the Police have the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. This section states as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

The Police have claimed that section 8(2)(a) applies to the records. Accordingly, I will consider whether this section applies in order to determine whether the records are exempt under section 38(a).

Section 8(2)(a) reads as follows:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

In order for a record to qualify for exemption under this section, the matter to which the records relate must first satisfy the definition of “law enforcement” as defined in section 2(1) of the Act. I find that Records 1 and 2 are occurrence reports prepared by the Police during the course of an investigation into a possible violation of the Criminal Code, which clearly qualifies as a law enforcement matter within the meaning of section 2(1) of the Act. I find that Record 3 was not prepared by the Police in the course of their law enforcement, inspections or investigations and does not relate to a “law enforcement” matter.

The word “report” is not defined in the Act. Based on previous orders, however, for a record to be a report, it must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

However, in my view, Records 1 and 2 contain the observations of the complainants, as recorded by the police officers, and do not qualify as “reports” for the purposes of section 8(2)(a). I find that section 8(2)(a) does not apply and Records 1, 2 and 3 are not exempt under section 38(a) of the Act.

INVASION OF PRIVACY

As I have indicated above, Record 1 contains the personal information of both the appellant and the affected person. In her representations, the affected person indicates that the record contains her telephone number and date of birth, which should not be disclosed. I have highlighted the affected person’s personal information which falls into this category on the copy of the record provided to the Freedom of Information and Privacy Co-ordinator of the Police.

I find that the remaining information in this record relates solely to the appellant. In my view, disclosure of this personal information to the appellant would not constitute an unjustified invasion of privacy. The Police have not claimed that any other discretionary exemption applies to this information and it should be disclosed to the appellant.

The records that remain to be considered are the highlighted parts of Record 1, the withheld portions of Record 2 and Record 3, withheld in its entirety.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals 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 submit that the information in the records was compiled and is identifiable as part of an investigation into a possible violation of law. The Police state that the purpose of the investigation was to determine if the actions of any of the parties involved constituted a criminal matter and if the laying of criminal charges was warranted.

The appellant has made no representations. I have reviewed the records together with the representations of the Police and the affected person and I make the following findings:

1. The personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law (the Criminal Code). Accordingly, the presumed unjustified invasion of personal privacy under section 14(3)(b) applies.
2. Section 14(4) does not apply to this information and the appellant has not raised the possible application of section 16 of the Act.
3. Accordingly, disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy of individuals other than the appellant this information is exempt under section 38(b) of the Act.

ORDER:

1. I uphold the decision of the Police to deny access to Record 3 in its entirety, the withheld portions of Record 2, and the parts of Record 1 which I have highlighted on the copy of the record provided to the Freedom of Information and Privacy Co-ordinator of the Police with this order.
2. I order the Police to disclose the portions of Record 1 which are not highlighted to the appellant by sending him a copy of the record by **September 5, 1996** but not before **August 30, 1996**.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ August 1, 1996