



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

# **ORDER M-843**

**Appeal M\_9600120**

**Peel Regional Police Services Board**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Peel Regional Police Services Board (the Police). The request was for access to the entire contents of the Police file relating to an incident in which the appellant was the victim of an assault. The Police granted access to the appellant's witness statement and partial access to the four page occurrence report. The Police denied access to the remainder of the occurrence report and all of the other 31 pages in the file, under the following sections of the Act:

- law enforcement - section 8(2)(a)
- invasion of privacy - section 14

The Police also denied access to a portion of the occurrence report, claiming it was not responsive to the request.

The appellant appealed the decision of the Police. A Notice of Inquiry was sent to the appellant and the Police. As I was of the opinion that the records may contain the personal information of the appellant, a supplemental Notice of Inquiry was sent to the parties requesting their submissions on the application of sections 38(a) and (b) of the Act. Representations were received from both parties.

In its representations, the Police indicated that three more pages were disclosed in full and parts of four pages which had previously been withheld were disclosed to the appellant.

## **RECORDS:**

The records remaining at issue in this appeal consist of the Prisoner Log, the Prisoner's Property Security Envelope, printouts from the Canadian Police Information Centre (CPIC), the fingerprint record of the accused, parts of the occurrence report, and parts of the Crown Brief.

## **DISCUSSION:**

### **RESPONSIVENESS**

The Police submit that part of the first page of the occurrence report is not responsive to the appellant's request.

The issue of responsiveness of records was canvassed in detail by Inquiry Officer Anita Fineberg in Order P\_880. That order dealt with a re\_determination of this issue following the decision of the Divisional Court in Ontario (Attorney General) v. Fineberg (1994), 19 O.R. (3d) 197.

In the Fineberg case, the Divisional Court characterized the issue of the responsiveness of a record to a request as one of relevance. In her discussion of this issue in Order P\_880, Inquiry Officer Fineberg stated as follows:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

I agree with these conclusions and adopt them for the purposes of this appeal.

In my view, the request includes the entire contents of the Police file relating to the incident. I find that the undisclosed portions of the first page of the occurrence report is part of the Police file, and is reasonably related to the request, even though it relates to a charge unrelated to the appellant's involvement in the incident. Accordingly, I find that the undisclosed portion of the occurrence report is responsive to the request.

### **INVASION OF PRIVACY**

I have reviewed the records, and I find that Records 1-4, 23, 30, 35 and 42-46 contain the personal information of the appellant and other individuals. Records 5-10, 24, 27-29, 31-34, 36, 38-41 and 47 contain the personal information of individuals other than the appellant.

Section 36(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 38 sets out exceptions to this right.

Where a record contains the personal information of both the appellant and other individuals, section 38(b) of the Act allows the institution 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. The appellant is not required to prove the contrary.

Where, however, the record only contains the personal information of other individuals, section 14(1) of the Act prohibits an institution from disclosing it 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 institution 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 institution must consider the factors listed in section 14(2) as well as all other relevant circumstances.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. 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 Ministry 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 appellant submits that as the contents of the Occurrence Report and the Crown Brief would in all likelihood have been made public in their entirety during the trial, to deny their contents to him would be to put the victim of an offence in a worse position than a spectator at the trial.

There is no evidence before me which would suggest that the Occurrence Report or the Crown Brief themselves were available to the public during the trial. Additionally, disclosure of information in the context of a criminal trial does not negate the Act's mandatory prohibition against the disclosure of personal information.

With respect to the records which contain the personal information of individuals other than the appellant, the appellant has not convinced me that disclosure would not constitute an unjustified invasion of personal privacy. Accordingly, I find that the exception to the mandatory exemption does not apply, and I uphold the decision of the Police not to disclose Records 5-10, 24, 27-29, 31-34, 36, 38-41 and 47.

With respect to the records which contain the personal information of the appellant and other individuals, I am persuaded that the information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, section 14(3)(b) of the Act applies. Since section 14(4) is not relevant in the circumstances of this appeal and the appellant has not raised the application of section 16, I find that Records 1-4, 23, 30, 35 and 42-46 are exempt under section 38(b) of the Act.

## **ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ October 1, 1996