



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

ORDER M-891

Appeal M_9600303

Hamilton_Wentworth 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 Hamilton-Wenworth Regional Police Services Board (the Police) received a request for access to all "Police Surveillance Reports" and "Provincial Privacy Files and Police Files" in relation to the appellant. The Police sought clarification from the appellant as to the nature and scope of his request and advised him that should no additional information be received from him they would proceed on the "surveillance" records alone.

At the time the Police were required by the Act to issue their decision, no additional information had been received from the appellant. Therefore, the records at issue in this appeal consist of a series of "Intelligence Branch/Surveillance Reports" totalling 78 pages and covering the time period from July 1984 to April 1985. The Police denied access in full to the records claiming the following exemptions:

- law enforcement - sections 8(1)(c), (d), (e), (g) and 8(2)(a)
- invasion of privacy - section 38(b)
- discretion to refuse requester's own personal information - section 38(a)

The requester appealed this decision and, at this time, indicated that he wished to include all other records pertaining to him in this appeal. During mediation, however, it was agreed that the appellant would submit a new request to the Police for this information.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT

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 records and I find that they contain the personal information of the appellant.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(a) of the Act, the Police have the discretion to deny access to records which contain an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 38(a) include the exemptions claimed with respect to the records at issue, namely, law enforcement (sections 8(1)(c), (d), (e), (g) and 8(2)(a)).

The Police claim that the records are exempt from disclosure under sections 8(1)(c), (d), (e), (g) and 8(2)(a) of the Act.

Section 8(1)(g) of the Act states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons.

The purpose of the exemptions contained in section 8(1) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to result in one of the harms set out in this section. The Police bear the onus of providing sufficient evidence to establish the reasonableness of the expected harm.

In order for the records to qualify for exemption under this section, the matter which generated the records must satisfy the definition of the term “**law enforcement**” as found in section 2(1) of the Act, which states that:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

I find that the records at issue clearly relate to a policing matter which falls within the law enforcement definition found in section 2(1).

In my view, for the purposes of section 8(1)(g) of the Act, “intelligence” information may be described as information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violation of law, and is distinct from information which is compiled and identifiable as part of the investigation of a specific occurrence (Order M-202).

The Police submit that the records at issue are “Intelligence Surveillance” reports and, therefore, their disclosure would reveal the intelligence information gathered during the Police surveillance of the appellant and his activities. I find that the Police have provided me with sufficient evidence to substantiate that the disclosure of this information could reasonably be expected to reveal law enforcement intelligence information. The records, therefore, qualify for exemption under section 8(1)(g).

As I have found that the records qualify for exemption under section 8(1)(g), they are exempt from disclosure under section 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ January 22, 1997