



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

ORDER M-885

Appeal M_9600281

Niagara 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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant in this appeal was the victim of a break and enter which resulted in the theft of some items and damage to his property. He submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Niagara Regional Police Services Board (the Police) for a copy of the police report regarding this break and enter.

The Police located the records responsive to the request and granted partial access to them. The Police denied access to the portions of a three-page Supplementary Report which identified the suspects in the break and enter pursuant to the following exemptions under the Act:

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

The appellant appealed the denial of access.

This office provided a Notice of Inquiry to the appellant and the Police. As the record appeared to contain the appellant's personal information, the Appeals Officer raised the possible application of sections 38(a) (discretion to refuse requester's own information) and 38(b) (invasion of privacy). The Police provided representations in response to the Notice.

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.

I have reviewed the information in the supplementary report and I find that it qualifies as "personal information". I find that this personal information relates to the appellant and other identifiable individuals.

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(b) of the Act, where a record contains the personal information of both the appellant and another individual and the Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of personal privacy of another person. Since the appellant has a right of access to his own personal information, the only situation under section 38(b) in which he can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's privacy. 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 in section 14(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act 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), as well as all other considerations that are relevant in the circumstances of the case.

The representations provided by the Police are very vague with respect to the record and the issues in this appeal. However, it is clear from a review of the record that it was compiled as part of an investigation into the break and enter as reported by the appellant. The Police point out that the majority of the information has been disclosed to the appellant and that disclosure of the remaining information would constitute a presumed unjustified invasion of privacy under section 14(3)(b) of the Act. The Police indicate that the information at issue consists of names of individuals, their dates of birth, addresses and telephone numbers. The Police submit that this information was compiled by the Police and is identifiable as part of an investigation into a possible violation of law (i.e. the Criminal Code).

In his letter of appeal, the appellant indicated that he was particularly interested in obtaining the names of the individuals involved so that he can take appropriate legal action to recover his damages. In this regard, the appellant has raised the possible application of the factor in section 14(2)(d) (fair determination of rights).

I have reviewed the record together with the representations of the Police. I make the following findings:

1. I find that the information at issue was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, I find that disclosure of this information would constitute a presumed unjustified invasion of privacy under section 14(3)(b) of the Act.
2. Even if I were to find that the factor in section 14(2)(d) applied in the circumstances of this appeal, the Divisional Court's decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that the factors and considerations in section 14(2) cannot be used to rebut the presumptions in section 14(3).
3. None of the information falls under section 14(4) and the appellant has not raised the possible application of section 16 of the Act.
4. Therefore, I find that the information withheld by the Police is exempt from disclosure under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____ January 3, 1997
Laurel Cropley
Inquiry Officer