



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

# **ORDER M-952**

**Appeal M\_9700043**

**Waterloo 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 is the father of an eight year old girl. Every two weeks, on the weekends, he sees the child in supervised access visits. Beginning in October of 1993, the appellant complained to Family and Children Services and to different Police authorities that his daughter was being emotionally and physically abused by her mother, as well as by her maternal grandparents. All of the allegations were investigated by the different authorities and were not substantiated.

In March of 1996, the appellant again made a similar allegation of child abuse to the Waterloo Regional Police Services Board (the Police). The appellant's statements of the allegations were videotaped by the Police. After questioning the appellant, the Police decided not to pursue the appellant's complaint.

The appellant subsequently requested a copy of the videotape. The request was made to the Police pursuant to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The Police denied access to the videotape in its entirety. The videotape was withheld on the basis of the following exemptions in the Act:

- law enforcement report - section 8(2) (a)
- law enforcement record - section 8(2)(c)
- threat to health and safety of an individual - section 13
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse access to requester's own information - section 38(a)

The appellant filed an appeal of the decision of the Police to deny him access to the videotape.

A Notice of Inquiry was sent to the Police, the appellant, the child's mother on her own behalf, as well as on behalf of the eight year old girl and to the child's maternal grandparents (the "affected parties"). Representations were received from all of the parties except for the maternal grandfather. The grandmother, in her representations, however, spoke about the impact that disclosure of the videotape could conceivably have on her husband.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

"Personal information" is defined in section 2(1) of the Act, in part, as recorded information about an identifiable individual. I have viewed the videotape and find that it contains the personal information of the appellant, his daughter, the child's mother and the maternal grandparents.

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.

Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of personal information would 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.

In their representations, the Police submit that sections 14(2) and (3) of the Act apply to the personal information on the videotape. They do not refer to any particular subsection or explain how the sections might apply. Having reviewed the contents of the videotape, it is my view that the presumption in section 14(3)(a) applies to some of the personal information. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

On the videotape, the appellant and the Police discuss some of the reports previously prepared by professionals who have assessed the appellant, his daughter and her mother. The reports contain psychological evaluations of these parties.

In my view, the presumption in section 14(3)(b) (compiled as part of an investigation into a possible violation of law) does not apply. The Police did not pursue the appellant's latest complaint as recorded on the videotape. Therefore, it cannot be said that the personal information on the videotape was compiled and is identifiable as part of an **investigation** into a possible violation of law. There was no investigation.

The submissions of the Police and the affected parties may, however, be characterized as relating to some of the circumstances set out in section 14(2) of the Act which weigh in favour of privacy protection.

The Police state that the appellant continues to pursue the issue of child abuse, even after being informed by professionals that there is insufficient evidence to support his allegations. They also submit that these allegations are causing emotional strain on his daughter and exacerbating her condition. The Police maintain that disclosure of the videotape could unfairly damage the reputation of the affected persons.

In her representations, the mother of the child states that she fears that if the appellant persists in making such allegations, her daughter will never be able to put this negative experience behind her and will be irreparably scarred in some way. The grandmother emphasizes the considerable stress, both physical and mental, as well as financial, the appellant's accusations have placed on the family.

It is clear from the appellant's Letter of Appeal, that he intends to re-open the issue of child abuse concerning his daughter. In his Letter of Appeal, the appellant explains that he needs the videotape to show that no investigation of child abuse of his daughter took place. Yet, in his representations, the appellant seems to acknowledge that the videotape cannot assist him in substantiating evidence of child abuse. In his representations, the appellant states:

The video tape cannot be used by myself as evidence. The statements made are my own. They deal with my observations and opinions. If this tape could be used as evidence, then all I would have to do is sit in front of a camera and record myself. **I cannot prove my own points** by saying that I am on video saying the same thing. [my emphasis]

I am satisfied that the videotape contains allegations made by the appellant that his child had spoken of physical and emotional abuse. I am also satisfied that the videotape reveals that the Police are aware that the appellant has made previous claims of child abuse concerning his daughter, they are aware of the chronology of these claims and to which authorities they were made, as well as the conclusions reached by these authorities concerning the appellant's allegations. As stated earlier, these allegations by the appellant have not been substantiated.

There are several previous orders of this office which have found that non-disclosure of personal information which was originally provided to an institution by an appellant would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure (Orders M-384, M-444, M-613, M-713, M-793, M-847, P-1263 and P-1375).

These orders have also found that to apply one of the presumptions in section 14(3) of the Act or its equivalent, section 21(3) of the Freedom of Information and Protection of Privacy Act, would offend the established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. On this basis, these orders have determined that applying the presumption to deny access to information which the appellant provided to the institution in the first place would be a manifestly absurd result.

However, in Order M-444, Inquiry Officer John Higgins allowed for the possibility that "in some cases, the circumstances would dictate that this presumption should apply to information which was supplied by the requester to a government organization". In my view, this is the case with respect to the personal information which falls within the presumption in section 14(3)(a). The reports referred to containing this information were actually prepared and written by individuals other than the appellant.

While it appears from the videotape that the appellant gave copies of these documents to the Police and thus would be aware of their contents, I am satisfied that to apply the presumption in section 14(3)(a) to those portions of the videotape relating to the psychological evaluations of the affected parties would not be an absurd result as the document originated with another party. This information does not fall within section 14(4) of the Act. Nor has the appellant maintained that there is a compelling public interest in disclosure of this information. Thus it is exempt pursuant to section 38(b) of the Act.

With respect to the balance of the personal information not subject to the presumption, I am also of the view that this information and the circumstances of this case are different from the fact situations in other orders in which the information has been disclosed on the basis that the appellant is aware of it or has provided it to an institution regardless of whether it is subject to a presumption. While it would admittedly be the rare case in which a consideration of all the relevant circumstances under section 14(2) of the Act would lead to the conclusion that disclosure of such information would constitute an unjustified invasion of privacy, I find that this is such a case.

The following are my findings with respect to section 14(2) based on a consideration of all the relevant circumstances of this case, including the factors that:

- (1) Given that the appellant was present when the videotape was made, the information on the videotape is within his knowledge by virtue of his involvement in the situation which lead to the creation of the record. The fact that the appellant is aware of the information at issue, and in fact, provided much of it to the Police, weighs in favour of disclosure.
- (2) I find that statements made in the videotape concerning the affected parties could unfairly expose them to pecuniary or other harm and that section 14(2)(e) of the Act is a relevant consideration favouring privacy. In addition, I find that this unfair exposure to harm would likely be in the form of the continuing harassment of the affected parties in circumstances where the allegations have been investigated numerous times with negative results.
- (3) I find that the personal information on the videotape is highly sensitive and that section 14(2)(f) of the Act is a relevant consideration favouring privacy.
- (4) As the disclosure of much of the personal information may unfairly damage the reputation of the affected persons, section 14(2)(i) of the Act is a consideration favouring non-disclosure of the videotape.
- (5) I find in the particular circumstances of this case, that there is a risk that inappropriate use by the appellant of the videotape could cause a real prejudice to his daughter, as well as to other affected parties. The risk, in this case, constitutes a compelling reason for non-disclosure.

Based on all of the foregoing, I find that disclosure of the videotape to the appellant would constitute an unjustified invasion of the personal privacy of the affected persons pursuant to section 38(b) of the Act.

Because of this finding, it is not necessary for me to deal with sections 8(2)(a) and (c) and 13 of the Act.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ June 18, 1997