



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

# **ORDER M-955**

**Appeal M\_9700010**

**Windsor Police Services Board**



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On June 12, 1997, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

## **NATURE OF THE APPEAL:**

The Windsor Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of a named detective's report regarding the requester's daughter. The request also posed three questions which related to Police contact with his daughter. The first two questions asked for information about Police procedure and the qualifications of the police officer who spoke with the appellant's daughter. The third question asked whether the appellant's daughter is now or has been under the protection of the Police.

The Police granted partial access to the report and denied access to the remaining information based on the following exemptions contained in the Act:

- invasion of privacy - sections 38(b) and 14(1)

In addition, the Police provided some information in response to the first two questions but did not provide any response to the third.

In their decision letter, the Police explained to the requester that because his daughter was over the age of 16 she was entitled to the personal privacy rights set out in the Act. Further, the Police informed the requester that his daughter had refused to consent to the disclosure of her personal information to him.

The requester (now the appellant) appealed this decision to the Commissioner's office.

During mediation of the appeal, the Police provided additional information relating to the first two questions posed by the appellant. The appellant indicated that he was satisfied with the severed copy of the report and the response to his first two questions. The Police refused to provide any information with respect to the third question. The Police issued a second decision letter claiming section 14(5) of the Act to refuse to confirm or deny the existence of records which are responsive to the third question.

No further mediation was possible. The appellant agreed that the only issue remaining in the appeal is whether the Police are entitled to refuse to confirm or deny the existence of records responsive to the third question pursuant to section 14(5) of the Act. This office sent a Notice of Inquiry to the Police and the appellant. Representations were received from both parties.

## **DISCUSSION:**

### **REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD**

The Police rely on section 14(5) to refuse to confirm or deny whether any record responsive to the appellant's third question exists. This section states:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 14(5), the Police are denying the appellant the right to know whether a record exists, even if one does not.

For this reason, in relying on section 14(5), the Police must do more than merely indicate that the disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy. The Police must establish that the disclosure of the mere existence or non-existence of the requested record would convey information to the requester, the disclosure of which would constitute an unjustified invasion of personal privacy (Order M-328).

Accordingly, I will begin by considering whether the disclosure of a record of the type requested, if it exists, would constitute an unjustified invasion of personal privacy. If the answer to this question is yes, I will then consider whether the disclosure of the existence or non-existence of a record of the type requested would constitute an unjustified invasion of personal privacy.

An unjustified invasion of personal privacy can only result from the disclosure of personal information. Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

Records of the nature requested, if they exist, would contain information that the appellant's daughter had been under the protection of the Police. In their representations, the Police state that if an individual is or was under the "protection" of the Police this would entail the individual's involvement in some capacity with a law enforcement matter. I find that such information, if it exists, would qualify as the personal information of the appellant's daughter.

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 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 against disclosure can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions 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 circumstances that are relevant in the circumstances of the case.

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)). The Police submit that if records responsive to the request exist, access to them would be denied as they would fall under this presumption.

In his representations, the appellant submits that the Police are invoking section 14(5), not to protect personal privacy, but to suppress information which the answer to the third question could bring.

In my view, the disclosure of records of the type requested, if they exist, would fall under the presumed unjustified invasion of personal privacy found in section 14(3)(b). Records of this type are not among those listed in section 14(4) and the appellant has not raised the possible application of section 23. Therefore, I find that disclosure of records of the type requested, if they exist, would constitute an unjustified invasion of personal privacy.

Having determined that the disclosure of records of the type requested, if they exist, would constitute an unjustified invasion of personal privacy, I will now turn to the question of whether disclosure of the mere existence or non-existence of responsive records would also constitute an unjustified invasion of personal privacy.

I find that the disclosure of the existence or non-existence of records of the sort requested would reveal personal information about an identifiable individual, specifically, whether or not that individual has been or is involved in a law enforcement matter in some capacity.

For the same reasons I have set out in my analysis relating to the disclosure of responsive records, if they exist, I find that the disclosure of the mere existence or non-existence of records of the nature requested, would constitute an unjustified invasion of the personal privacy of the requester's daughter.

Therefore, the Police have established the requirements for the application of section 14(5) of the Act.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Marianne Miller  
Inquiry Officer

\_\_\_\_\_ June 27, 1997