



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

ORDER M-970

Appeal M_9700119

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

The Halton Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for all files relating to the appellant. The request was later clarified to include only those records containing information relating to the investigation by the Police of a complaint made by another named individual (the primary affected person) against the appellant.

The Police located a number of responsive records and, following notification to several individuals pursuant to section 21 of the Act, granted partial access to them. The Police denied access to the remaining records or parts of records, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 8(2)(a) and (c)
- invasion of privacy - sections 14(1) and 38(b)

The appellant appealed the decision by the Police to deny access to the records. A Notice of Inquiry was sent by this office to the appellant, the Police, the primary affected person and to five other individuals whose rights may be affected by the disclosure of the records (the affected persons).

Because the record appeared to contain the personal information of the appellant and other identifiable individuals, and the Police have claimed the application of sections 8(2)(a) and (c) to the records, the Notice of Inquiry also invited the parties to make submissions on the application of section 38(a) to the records. Representations were received from the Police only.

The records consist of police officers' notes, occurrence reports, witness statements, correspondence and a videotape of the Police interview of a witness.

DISCUSSION:

PERSONAL INFORMATION

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 and each of the affected persons. In addition, I accept the evidence tendered by the Police that the videotape contains the personal information of the appellant and other individuals.

INVASION OF PRIVACY

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

Where a record contains the personal information of both the appellant and other individuals, section 38(b) of the Act allows the Police to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of 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 Police 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 Police must consider the factors listed in section 14(2), as well as any/all other relevant circumstances.

The Police state that the personal information contained in the records was compiled as part of an investigation into a possible violation of law, the commission of a criminal offense by the appellant. Accordingly, they argue that the presumption in section 14(3)(b) applies to exempt this information from disclosure. This section provides:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

Based on the submissions of the Police and my review of the records, I find that the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law, the Criminal Code. In addition, I find that the exceptions contained in section 14(4) have no application in the present appeal. Further, the appellant has not claimed the application of section 16.

As I have found that the presumption in section 14(3)(b) applies, I find that the disclosure of the information contained in the records, including the videotape, would constitute an unjustified invasion of the personal privacy of the affected persons and the records are properly exempt under section 38(b).

Because of the manner in which I have addressed the application of section 38(b) to the records, it is not necessary for me to consider the application of sections 8(2)(a) and (c) and section 38(a).

ORDER:

I uphold the Police's decision to deny access to the records.

Original signed by: _____
Donald Hale
Inquiry Officer

July 18, 1997