



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

# **ORDER M-993**

**Appeal M\_9700120**

**Halton 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/Téloc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

A complaint about the requester was filed with the Halton Regional Police Services Board (the Police). As a result, an occurrence report was completed and the requester was asked to attend for an interview at the police station.

Subsequently, the requester submitted a request to the Police under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the occurrence report and the police officer's notes of the interview, together with any other information pertaining to the requester or anyone associated with her.

The Police identified records responsive to the request and determined that the interests of the individual who had filed the complaint (the complainant), would be affected by disclosure of the information. Accordingly, the Police notified the complainant, who objected to the disclosure of the information. The Police then denied access to the records on the basis of the following exemptions in the Act:

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

The requester appealed the decision to deny access.

The records at issue consist of the occurrence report, a police officer's notebook entries and the police officer's handwritten notes.

This office provided a Notice of Inquiry to the appellant, the Police and the complainant. Representations were received from all parties.

## **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 information in the records and I find that it relates to the appellant, the complainant and other identifiable individuals and constitutes their personal information.

### **INVASION OF PRIVACY**

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the Police 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) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 14(3) 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 under section 16 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption.

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) of the Act, as well as all other considerations that are relevant in the case.

The appellant states that she has a right of access to her own information and argues that information relating to other individuals can be severed from the record. The appellant submits that the information may be inaccurate and has thus raised the application of the factor in section 14(2)(g) (unlikely to be accurate or reliable).

The Police submit that the information was compiled and is identifiable as part of a police investigation into an allegation of harassment. The Police state that the records contain information pertaining to the complainant's race and his employment and educational background. The Police submit that therefore, the presumptions in sections 14(3)(b), (d), (g) and (h) apply to the information in the records. The Police submit that the personal information is also highly sensitive (section 14(2)(f)), was supplied in confidence (section 14(2)(h)) and disclosure may unfairly damage the reputation of and cause pecuniary or other harm to the complainant and/or his family (sections 14(2)(i) and (e)).

The complainant objects to the disclosure of any of the information that he has provided to the Police. His representations support the exemptions raised by the Police.

As I have indicated previously, part of the records consist of the police officer's notebook entries. Some of these entries relate to the police officer's interview and telephone conversation with the appellant and therefore contain information provided by the appellant to the Police. In Order M\_444, former Inquiry Officer John Higgins found that non-disclosure of the information which the appellant in that case initially provided to the Police 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. In this case, as in the one considered by former Inquiry Officer Higgins, applying the presumption to deny access to the information which the appellant has provided to the Police, would, according to the rules of statutory interpretation, lead to an "absurd" result. On this basis, I find that the presumptions in sections 14(3)(b), (d), (g) and (h) do not apply to the information provided by the appellant to the Police. I have also considered the factors in section 14(2) and

all of the circumstances of this appeal and I find that disclosure of this information would not constitute an unjustified invasion of personal privacy and section 38(b) does not apply. I have identified the information supplied by the appellant by highlighting the relevant portions of pages 4, 5, 6, 7 and 8 of the police officer's notebook on the copies of the pages which are being sent to the Freedom of Information and Privacy Co-ordinator of the Police with this order.

I have reviewed the remaining records and I find that the presumption in section 14(3)(b) applies as the information in the records was clearly compiled and is identifiable as part of a police investigation into a possible violation of the law (the Criminal Code). As noted above, once a presumption is found to apply to the personal information contained in a record, no factor or combination of factors listed in section 14(2) can operate to overcome the operation of the presumption. I find that sections 14(4) and 16 are not applicable to this information. Accordingly, the remaining records (i.e. the occurrence report, police officer's handwritten notes and the non-highlighted portions of the entries in the police officer's notebook) are exempt under section 14(3)(b), and section 38(b) applies.

The Police have also claimed that the discretionary exemptions in sections 8(1)(e) and (l) and 8(2)(a) and (c) apply to the records. I will therefore consider the application of these sections to the highlighted portions of the police officer's notebook entries.

#### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT**

Section 38(a) of the Act gives the Police the discretion to deny access to records containing a requester's own personal information where certain listed exemptions, including section 8, would otherwise apply.

Sections 8(1)(e) and (l) state:

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

- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

I have reviewed the representations of the Police together with the highlighted portions of the record. In my view, there is not sufficient evidence to establish that disclosure of the information which the appellant has herself provided to the Police could reasonably be expected to result in the harms outlined in sections 8(1)(e) and (l). Therefore, I find that the information is not exempt under sections 8(1)(e) and (l) and section 38(a) does not apply.

The Police have also claimed that sections 8(2)(a) and (c) apply. These sections state:

A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability.

I accept the record at issue was prepared by the Police as a law enforcement agency and is, therefore, a law enforcement record. The term "report" is not defined in the Act. Based on previous orders, however, for a record to be a report, it must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200). I have reviewed the highlighted portions of the police officer's notes. In my view, the record consists of the factual recording of the interview and telephone conversation with the appellant and does not qualify as a "report" for the purposes of section 8(2)(a) of the Act. With respect to section 8(2)(c), I cannot accept that disclosure of the appellant's own information to her could reasonably be expected to expose the police officer or the appellant to civil liability. There is not sufficient evidence to establish that section 8(2)(c) applies. Accordingly, I find that section 38(a) does not apply.

### **ORDER:**

1. I order the Police to disclose to the appellant the highlighted portions of the record (a copy of which is being sent to the Police with this order) by sending her a copy by **October 2, 1997** but not before **September 29, 1997**.
2. I uphold the decision of the Police to deny access to the occurrence report, the police officer's rough notes and the non-highlighted portions of the police officer's notebook entries.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

August 28, 1997