



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

ORDER M-1038

Appeal M-9700229

Ottawa-Carleton Regional Police Services Board



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NATURE OF THE APPEAL:

The Ottawa-Carleton Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all records pertaining to a named police officer's visit to the requester's residence. In particular, the requester sought access to all reports, statements, memos, telephone contacts and correspondence.

The Police notified an individual whose interests may be affected by disclosure of the records, pursuant to section 21 of the Act (the affected person). The affected person objected to disclosure of the records. The Police subsequently granted partial access to the requester. Access was denied to the remaining records pursuant to the exemptions provided by sections 8(2)(a) (law enforcement), 38(a)(discretion to refuse requester's own information), 14(1) and 38(b) (invasion of privacy). The requester appealed the decision to deny access.

The records at issue consist of the undisclosed portions of a general occurrence report and a page from a police officer's notebook, together with a supplementary investigation report with a letter attached.

This office provided a Notice of Inquiry to the appellant, the affected person and another individual referred to in the records (hereinafter collectively the affected persons) and the Police. Representations were received from the appellant, the Police and one of the affected persons.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

Having reviewed the records, I find that they contain the personal information of the appellant and the affected persons.

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 they determine 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 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 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.

The Police submit that the information was compiled as a result of an investigation into a complaint about a possible violation of the law and to ascertain whether the laying of criminal charges was warranted (section 14(3)(b)). The Police submit that the presumption in section 14(3)(a) also applies to those parts of the records which contain personal information about the medical condition of one of the affected persons.

The appellant states that she needs access to the records for the purpose of clarification and in order to bring closure to certain distressing events in her life.

I have carefully reviewed the representations of the appellant, the Police and the affected person. I have also reviewed the records at issue. I find that some of the information in the records relates to the medical condition of one of the affected persons and clearly falls within the presumption provided by section 14(3)(a). I also find that the presumption in section 14(3)(b) applies to the remaining personal information because it was clearly "compiled" and is "identifiable" as part of an investigation into a possible violation of the law (the Criminal Code).

As I have indicated previously, the only way that a presumption under section 14(3) can be overcome is if the personal information falls within section 14(4) or if a finding is made that section 16 is found to apply. While I can understand the position of the appellant, I am bound by the legislation. I find that sections 14(4) and 16 do not apply to this information. Accordingly, the records are exempt under section 38(b).

Because I have found the records to be exempt from disclosure, I need not consider the application of the other exemptions raised by the Police.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ November 20, 1997