



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-984

Appeal M_9700140

Niagara Regional Police Services Board



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NATURE OF THE APPEAL:

While out driving, the appellant was involved in an altercation with the driver of another vehicle which resulted in an exchange of blows. The police were called to the scene and conducted an investigation into the circumstances of the incident. The appellant subsequently submitted a request to the Niagara Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to the complete reports prepared by a named police officer regarding the assault. The appellant also requested copies of summonses dated April 2 and 3, 1997.

The Police located the responsive records and granted partial access to them. The Police denied access to the remaining portions of the records based on the exemptions in the following sections of the Act:

- law enforcement report - section 8(2)(a)
- invasion of privacy - section 14(1).

The appellant appealed this decision. During mediation, the Police disclosed further information to the appellant and issued a revised decision letter in which they claimed the additional exemptions in sections 38(a) (discretion to refuse requester's own information) and 38(b) (invasion of privacy).

This office sent a Notice of Inquiry to the appellant, the Police, the other driver involved in the altercation and a witness. Representations were received from the Police only. The appellant provided a signed consent from an individual who was identified as his "wife" in the records for the disclosure of her personal information to the appellant.

The records at issue consist of the withheld portions of a one-page Police General Incident Report and a four-page Supplementary Report.

DISCUSSION:

INVASION OF PRIVACY

Personal information is defined, in part, as recorded information about an identifiable individual. Both records contain the names, addresses and other personal information of the individuals involved in the incident and a summary of the circumstances surrounding it. I find that the records contain the personal information of the appellant, his "wife", the other driver and a witness. I also find that the information pertaining to the appellant and his "wife" is so intertwined with that of the other individuals that it is not severable. Therefore, the fact that the "wife" has consented to disclosure of her personal information to the appellant is not sufficient to render the exception to the section 14(1) exemption in section 14(1)(a) (consent to disclosure) applicable.

Where a record contains the personal information of both the appellant and other individuals, 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.

The Police state that the information at issue was provided to the attending police officer by the victim and the witness to the incident. This information was provided during the police officer's investigation into an assault, which is an offence under the Criminal Code. Therefore, the Police submit that disclosure of this information would be a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act. This section provides:

A disclosure of personal privacy 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, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

In reviewing the records, I find that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the personal information in the records, because this information was clearly "compiled" and is "identifiable" as part of an investigation into a possible violation of law (the Criminal Code).

I find that neither section 14(4) nor section 16 (public interest override) applies to the information in the records. Accordingly, the information at issue in the records is properly exempt under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley

_____ August 11, 1997

Inquiry Officer