



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

ORDER M-1036

Appeal M-9700198

Hamilton-Wentworth Regional Police Services Board



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NATURE OF THE APPEAL:

The Hamilton-Wentworth 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 relating to Police Occurrence Number 95-705184-0, which involved the appellant. The Police identified two responsive records; a three-page “Occurrence Report”, and a three-page “Memorandum” with 38 pages of attachments. Both records were authored by police officers.

Before deciding how to respond to the request, the Police notified four individuals whose interests might be affected by disclosure of the records (the affected persons). One affected person consented to disclosure, and all information pertaining to this person was subsequently provided to the appellant. Two other affected persons objected and the fourth did not respond. After considering submissions made by the affected persons, the Police granted partial access to all three pages of both the Occurrence Report and the Memorandum, and denied access in full to the 38 pages of attachments. The exemptions relied on by the Police were:

- law enforcement - sections 8(2)(a) and (c)
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse requester's own information - section 38(a).

The appellant appealed this decision.

A Notice of Inquiry was sent to the appellant, the Police and the three affected persons who did not consent to disclosure. Representations were received from the appellant, the Police and one affected person. One other affected person did not submit representations, and the third affected person asked that his submissions made at the request stage be considered on appeal.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Section 2(1) of the Act defines “personal information”, in part, to mean recorded information about an identifiable individual. I find that the record clearly contains the personal information of the appellant, two of the affected persons, and some other individuals referred to in the attachments.

The third affected person's name appears twice on the Occurrence Report and once on the Memorandum. He is identified as holding the position of “Regional Solicitor”. In each instance, the text surrounding his name refers to his position, and this text has already been disclosed to the appellant. In Order P-157, former Commissioner Sidney B. Linden found that the name and telephone number of an individual which identifies him in a professional capacity does not qualify as “personal information”. Former Commissioner Tom Wright also found in Order P-270 that an opinion given by a person in his professional capacity is not “personal information”. These approaches have been followed in many subsequent orders, and I adopt

them for the purposes of this appeal. In my view, the name of the Regional Solicitor referred to on pages 2 and 3 of the Occurrence Report and page 1 of the Memorandum simply identifies him in a professional capacity and is not his personal information.

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 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 submit that the presumptions in sections 14(3)(a), (b), (d) and (g), and the factors in sections 14(2)(e), (f), (h) and (i) apply. The representations from the affected person support this position.

The appellant submits that disclosure of the record would not constitute an unjustified invasion of personal privacy because most of the information relates to her and is required in order to prepare a proper defence in ongoing litigation. This raises the considerations of section 14(2)(d) of the Act (fair determination of rights) as a factor favouring disclosure.

Turning first to section 14(3)(b), it states that:

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, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The Occurrence Report and Memorandum were both prepared by police officers in response to a complaint referred to them by the Regional Municipality of Hamilton-Wentworth. The Police submit that the investigation was conducted in response to the complaint concerning a possible violation of law, specifically various provisions of the Criminal Code of Canada. Having reviewed the records, I agree,

and find that the personal information contained in the records was clearly compiled and is identifiable as part of an investigation into a possible violation of law, and the presumed unjustified invasion of personal privacy in section 14(3)(b) applies. Even if I were to accept the appellant's submissions, as I indicated earlier, a factor or combination of factors under section 14(2) cannot rebut a presumption under section 14(3).

I find that neither section 14(4) nor section 16 are applicable, and the personal information withheld by the Police is exempt from disclosure under section 38(b) of the Act.

LAW ENFORCEMENT/DISCRETION TO DENY REQUESTER'S OWN INFORMATION

The only information remaining at issue is the name of the Regional Solicitor, which I have found does not qualify as personal information.

As I discussed above, section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38(a) of the Act gives the Police discretion to deny access to a record containing a requester's own personal information where certain listed exemptions, including section 8, would otherwise apply. The Police claim that sections 8(2)(a) and (c) apply in the circumstances of this appeal.

Sections 8(2)(a) and (c) read as follows:

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 am satisfied that the records were prepared in the course of a law enforcement investigation by an agency which has the function of enforcing and regulating compliance with a law.

The Police submit that police occurrence reports are prepared to assist officers who are assigned to follow up incidents and further investigations, and to prepare cases for the Crown if there is a subsequent arrest and prosecution. The Police argue that the records were prepared while engaged in the conduct of an investigation, and that they are properly considered "reports" for the purposes of section 8(2)(a).

The word “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).

Having reviewed the records, I find that they do not qualify as “reports”. The Occurrence Report is a form document routinely completed by police officers as part of the criminal investigation process. The Memorandum, like the Occurrence Report, consists primarily of observations made by the police officer during his investigation, together with statements and supporting documentation provided by others. Although prepared in memo format, in my view, this record is essentially the same as an Occurrence Report. I find that neither of these records are properly characterized as a “report” for the purposes of section 8(2)(a). I also note that portions of both records have already been disclosed to the appellant. Only the name of the Regional Solicitor remains at issue and, in my view, this is clearly not the type of information intended to attract the section 8(2)(a) exemption claim.

With respect to section 8(2)(c), the Police state that the appellant has commenced civil proceedings against several individuals, and express concern that other people named in the records could also be subject to civil liability if their personal information is disclosed. I have already determined that the personal information of individuals other than the appellant is exempt under section 38(b), and therefore no longer at issue.

The Regional Solicitor expresses concern that civil legal proceedings against him would be commenced if his name is disclosed. As noted earlier, the Regional Solicitor’s job title has already been disclosed by the Police. I find that any exposure to potential civil liability for the Regional Solicitor occurred at the time the Police responded to the appellant’s request. The portions of the records disclosed at that time made the appellant aware of the role played by the Regional Solicitor. In my view, disclosure of his name would not increase this exposure, and I find that the name does not qualify for exemption under section 8(2)(c).

Because neither sections 8(2)(a) nor (c) apply, I find that the name of the Regional Solicitor is not exempt under section 38(a).

ORDER:

1. I order the Police to disclose the name of the Regional Solicitor contained on pages 2 and 3 of the Occurrence Report, and page 1 of the Memorandum, by sending the appellant a copy of these pages no later than **December 24, 1997** but not before **December 19, 1997**.
2. I uphold the decision of the Police not to disclose the remaining pages and partial pages of records, including the severed portions of parts of page 2 of the Occurrence Report and page 1 of the Memorandum that do not consist of the name of the Regional Solicitor.

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 records which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

Tom Mitchinson
Assistant Commissioner

_____ November 19, 1997