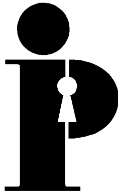

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-1077

Appeal M-9700285

York Regional Police Services Board

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NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the York Regional Police Services Board (the Police) for access to any records on file concerning herself. The Police located records responsive to the request and denied access, in part, based on the exemption in section 38(b) (with reference to section 14(3)(b)) of the Act (invasion of privacy).

The appellant then made a further request to the Police to have the records she received corrected. The appellant did not provide a fee of $5 with the request for correction. It is not clear whether the Police responded to the appellant's request for the correction of her personal information.

The appellant appealed the denial of access and the fact that the information she did receive is incorrect and has not been corrected.

During mediation, the Police advised this Office in a letter that it is their position that the appeal in regard to the severances made to the records should be decided by this Office before the Police make any decision with regard to corrections, and that a $5 request fee for correction is required. The Police did not provide a copy of this letter to the appellant.

The questions of whether a $5 request fee for correction is required and whether the Police may delay making a decision on a request for correction are also at issue in this appeal.
During the mediation of this appeal, the appellant stated that she believed additional records should exist. The issue of whether additional records exist (reasonable search) is, therefore, also the subject of this appeal.

This office provided a Notice of Inquiry to the Police and the appellant. Representations were received from both parties. In their representations, the Police indicated that upon further consideration of the wording of the Act and Regulation 823 made thereunder, they were of the view that no fee is required for the correction of an individual's personal information. I agree. Therefore, as the Police do not intend to charge the appellant a fee for the correction of her personal information, this question is no longer at issue.

RECORDS:

The records at issue in this appeal consist of the undisclosed portions of 17 pages comprising general occurrence reports, supplementary reports, records of arrest, vehicle report and computerized printouts containing incident information, arrest and property information, a court synopsis, warrant information, etc.

DISCUSSION:

TIMING OF CORRECTION DECISION

Section 36(2) of the Act provides:

> Every individual **who is given access** under subsection (1) to personal information is entitled to,
>
> (a) request correction of the personal information if the individual believes there is an error or omission;
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
>
> (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement. [emphasis added]

The appellant indicates that the Police should make a decision regarding the correction of the information to which she has been granted access immediately. The Police take the position that when a requester makes a request for personal information and then appeals the institution's decision related to that request, the appeal should be decided so that the requester has all her personal information that she is entitled to. The Police indicate that once that process is complete, then the requester can make one request, in accordance with the Act, for the corrections she feels are required and the institution will only have to deal with a correction request from the requester once.

I agree with the position taken by the Police. In my view, in order to avoid duplicity of activity on a particular file, all of the issues regarding access to the responsive records should be determined before addressing the issue of correction. Accordingly, I find that the approach taken by the Police in this regard was reasonable. Once the issues concerning the appellant's right to access have been determined in this order, she may submit a request for correction of all of the information she receives in response to her request for access.

REASONABLE SEARCH

In cases where a requester provides sufficient details about the records which he or she is seeking and the Police indicate that records do not exist, it is my responsibility to insure that the Police have made a reasonable search to identify any records that are responsive to the request. The Act does not require the Police to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Police must provide me with sufficient evidence to show that they have made a **reasonable** effort to identify and locate responsive records.

In her representations, the appellant lists a series of incidents involving herself between 1988 and 1991. She insists that the Police should have more records pertaining to her than they have indicated.

The Police indicate that prior to making an access request, the appellant spoke to the Freedom of Information and Privacy Co-ordinator (the Co-ordinator) about obtaining information regarding a complaint against a named individual. The Co-ordinator states that he conducted a computer search for the names of the appellant and the named individual to see if any records existed on the computer system with regard to the complaint. The Co-ordinator's search only revealed the records that were ultimately dealt with in the request. At that time, he advised the appellant that, if the person dealing with the complaint did not prepare a report and have it entered on the computer, the only way that he might locate any records regarding the complaint was if the appellant could provide him with the name of the person the appellant spoke to concerning the complaint. The requester was not able to do so. The Co-ordinator indicates that the appellant subsequently submitted the current access request.

With respect to the steps taken to search for responsive records, the Co-ordinator indicates that his assistant, an employee who has worked in the Police's Records Bureau for more than 10 years, searched the "Name Index" card files. This is a system which was used by the Police prior to the installation of a computer system in 1987. As a result of that search, records were located for the years 1979, 1980 and 1982. The Police indicate that records prior to 1979 have been destroyed in accordance with their Records Retention Schedule.

The Co-ordinator states that he again searched the "Name Index" in the computer system. As a result of that search, records for 1991, 1992 and 1993 were located.

The Co-ordinator states that the records located in the two searches noted above are the records which are the subject of this request and appeal.

With respect to a particular incident on March 24, 1990, the Co-ordinator asserts that a report does not exist. He states further that if there was a report with regard to this matter, it would have been disposed of in accordance with the Records Retention Schedule which was attached to the representations. The Co-ordinator points out that any records pertaining to "Call History" for this incident would also have been disposed of in accordance with the Records Retention Schedule.

The Co-ordinator indicates that if the requester could provide the name of the officer who was involved in the incident, he could check to see if that person has any records regarding the incident. The Co-ordinator advises that the police service strength is in excess of 870 people and suggests that without this information, it would not be reasonable to expect the Police to attempt to track down the particular police officer. In conclusion, the Co-ordinator submits that given the information which has been provided to them, the Police are unable to perform any further searches.

I have considered the representations of the parties and have reviewed the Records Retention Schedules provided by the Police. I am satisfied that any responsive records which have not been located would have been destroyed in accordance with these schedules. Further, I agree that an

attempt to track down a particular police officer who might have had contact with the appellant, without additional information, would not be reasonable in the circumstances. Based on the evidence before me, I am satisfied that the search conducted by the Police for responsive records was reasonable.

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. I have reviewed the records and I find that pages 1, 2 - 3, 4, 8, 10, 12, 13, 14 - 15, 17 and 18 contain the personal information of the appellant and other identifiable individuals.

I also find that pages 6, 7, 9, 11 and 16 contain only the personal information of other individuals and do not contain the personal information of the appellant.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the institution 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.

Where, however, the record only contains the personal information of another individual, section 14(1) of the Act prohibits an institution from disclosing it except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

In both these situations, 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.

Section 14(3)(b) states that:

> 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 various investigations into possible violations of law (the Criminal Code and/or the Highway Traffic Act).

However, a large portion of the records contains information which is about or was provided by the appellant, or of which she is clearly aware, such as addresses and family relationships. This information is found on pages 1, 3, 4, 12, 13, 14, 17 and 18.

Several previous orders of this office have considered whether information that an appellant was previously aware of, or which was provided to or received from an appellant by an institution, should be subject to a presumption against non-disclosure (Orders M-384, M-444, M-613, M-847 and P-1263). All of these orders deal with fact situations analogous to the present case in that the information at issue was the personal information of both the appellant and other individuals.

These orders found that non-disclosure of personal information which was originally provided to the institution by an appellant 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. They determined that applying the presumption to deny access to the information which the appellant provided to the institution would, according to the rules of statutory interpretation, lead to an "absurd" result.

In Order P-1414, I found that, in certain circumstances, this reasoning is equally applicable to information which was provided by others, or was obtained by the institution (in that case, the OPP), in the presence of the appellant.

In the circumstances of the current appeal, I am of the view that to apply the presumption in section 14(3)(b) to those portions of the records which contain information which is about or was provided by the appellant, or of which she is clearly aware, would lead to an absurd result. Accordingly, I find that this presumption does not apply to the information provided by the appellant, or which was provided in her presence, in these pages.

Accordingly, only the information which I have highlighted in yellow, on the copies of the records which are being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order, is exempt from disclosure under section 14(1) and section 38(b) of the Act.

I find that neither section 14(4) nor section 16 are applicable to the information which is highlighted in yellow.

ORDER:

1. The search for responsive records conducted by the Police was reasonable and this portion of the appeal is dismissed.

2. I uphold the decision of the Police regarding its decision to delay responding to the appellant's request for correction.

3. I order the Police to disclose to the appellant the non-highlighted portions of the records which I have attached to this order by providing her with copies of these pages on or before **March 11, 1998**.

4. I uphold the decision of the Police regarding the application of sections 38(b) and 14(1) to the remaining records.

5. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 3.

Original signed by: February 19, 1998
Laurel Cropley
Inquiry Officer