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

ORDER M-1120

Appeal M-9800068

Halton Regional Police Services Board

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NATURE OF THE APPEAL:

The Halton Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for the retrieval and return of records seized by the Oakville Police Service, a predecessor to the current Halton Regional Police Service, in connection with an investigation of the requester which took place in 1971. The Police identified several records relating to the investigation but were unable to locate any of the documents which were seized during the 1971 investigation. The Police denied access to portions of the investigation records under the following discretionary exemptions contained in the Act:

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

The requester (now the appellant) appealed the Police decision to deny access to the records and maintained that additional records responsive to the request should exist. A Notice of Inquiry was provided to the appellant, the Police and to another individual whose rights may be affected by the disclosure of the records (the affected person). Submissions were received from all of the parties.

The records consist of the undisclosed portions of several occurrence reports prepared by officers with the Oakville Police in February 1971. As I indicated above, the appellant is also seeking the return of records which were seized by the Oakville Police at the time of their investigation. The Appeals Officer assigned to this file advised the appellant that the Commissioner's office has no jurisdiction to order the return of these documents, if they still exist. Following a search by the Professional Standards Unit of the Police, the appellant was advised that the Police have been unable to locate either the seized documents or the filing cabinets which contained them. However, the appellant continues to maintain that further records responsive to his request should exist.

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 records and find that they contain information about the appellant and several other identifiable individuals, including the affected person.

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 provides a number of exceptions to this general right of access.

The Police rely on section 38(a) to deny access to the record. Under section 38(a), the Police have the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information [my emphasis].

The Police state that sections 8(2)(a) and (c) apply in the circumstances of this appeal. 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;

As far as section 8(2)(a) is concerned, only a "report" is eligible for exemption under this section. 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 M-1048).

An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. The Occurrence Reports which form the records at issue in this appeal consist primarily of descriptive information provided by several identifiable individuals, including the affected person, to a police officer, and they do not constitute a "report" within the meaning of section 8(2)(a). Therefore, I find that section 8(2)(a) does not apply, regardless of the fact that the record was prepared during the course of a criminal law enforcement investigation by an agency which, at the time, had the function of enforcing and regulating compliance with the law.

The Police submit that the appellant has indicated his intention to initiate a civil proceeding in connection with the incidents reflected in the records and that the "involved individuals" would be exposed to civil liability. I cannot agree that the disclosure of the remaining unsevered portions of these records could reasonably be expected to expose any person to civil liability. I find that I have not been provided with sufficient evidence to allow me to find that the disclosure of the severed information contained in the records could reasonably be expected to expose any of the individuals named therein to civil liability. Therefore, I find that section 8(2)(c) does not apply.

Because neither of sections 8(2)(a) or (c) apply, I find that section 38(a) is not applicable in the circumstances of this appeal.

INVASION OF PERSONAL PRIVACY

The Police also rely on section 38(b) of the Act. Under section 38(b), where a record contains the personal information of both the appellant and other individuals and the Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

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)(b) and (f) apply to the personal information in the records which remains undisclosed as it was compiled as part of an investigation into a possible violation of law and also refers to the financial history of an individual. In addition, the Police argue that the factors in sections 14(2)(f) (highly sensitive information) and (i) (unfair damage to an individual's reputation) are applicable in the circumstances of this appeal.

The affected person simply objects to the disclosure of any of his personal information to the appellant.

The appellant argues that his reputation and standing in the community have been damaged as a result of the charges which were brought against him. I note, however, that the charges were resolved well over 20 years ago.

After reviewing the records at issue, I find that disclosure of the information withheld from the records would constitute a presumed unjustified invasion of privacy under section 14(3)(b) as this information was clearly compiled and is identifiable as part of an investigation into a possible violation of law.

Even if I were to find that any of the factors referred to by the appellant applied in the circumstances of this appeal, the Ontario Court's (General Division) decision in the case of John Doe et al. v. Ontario (Information and Privacy Commissioner) held that the factors in section 14(2) cannot be used to rebut a presumption in section 14(3).

I find that neither section 14(4) nor section 16 are applicable to the information at issue. Therefore, I find that the withheld information in the records is properly exempt under section 38(b) of the Act.

REASONABLENESS OF 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.

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request.

The Police have described in detail the nature and extent of the searches which they have undertaken for the records which are responsive to the request. Again, I note that many years have passed since the time of the investigation and that the investigating police service no longer exists. The Police have provided me with a statement from the Clerk in its Records Bureau who conducted the search for responsive records outlining the steps taken to search its microfilm and paper records for documents relating to the appellant. In addition, as noted above, a search for records which the appellant alleges were seized by the Oakville Police in 1971 was undertaken by a Detective with the Professional Standards Bureau and nothing relating to the appellant was located.

The appellant has provided me with a number of documents in support of his position that the requested records exist. Reference is made to the seized records in transcripts of court proceedings in 1972 and 1973 and in examinations for discovery held in 1979, as well as in other correspondence which the appellant has forwarded. I note that these references to the seized records date from the 1970's. The appellant was unable to furnish any reference to the continued existence of these records after 1979. In my view, while records responsive to this portion of the appellant's request may have been in the possession of the Police at some time prior to that date, I am satisfied, based on the information provided to me by the Police, that the seized records sought by the appellant no longer exist. Based on the information provided to me by the Police, I find that their search for the seized documents which are referred to in the appellant's request was reasonable and, accordingly, I dismiss this aspect of the appeal.

ORDER:

I uphold the decision of the Police and dismiss this appeal.

Original signed by: June 10, 1998
Donald Hale
Adjudicator
(formerly Inquiry Officer)