



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1134

Appeal M-9800072

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) for access to the occurrence report and notebook entries of three named police officers relating to a December 23, 1997 incident involving the appellant.

The Police identified 10 pages of notebook entries and a two-page occurrence report. Before responding to the request, the Police notified an individual whose interests might be affected by disclosure (the affected person), pursuant to section 21 of the Act. After considering the affected person's submissions, the Police denied access to all responsive records pursuant to the following exemptions under the Act:

- law enforcement - sections 8(1)(a), (b) and (f); 8(2)(a) and (c)
- invasion of privacy - section 14(1)

The requester (now the appellant) appealed this decision.

This office sent a Notice of Inquiry to the appellant, the Police and the affected person. Because the records appeared to contain the appellant's own personal information, sections 38(a) and (b) of the Act were included in the Notice.

Representations were received from the Police and the affected person, but not from the appellant.

In his letter of appeal, the appellant alleges improper behaviour on the part of the Police employee who dealt with his request. Neither the appeal letter nor the appellant's representations provide details or elaborate on this allegation. I find that this allegation has not been substantiated by the appellant, and I will not deal with it further in this order.

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 I find that they contain the personal information of both the appellant and the affected person.

DISCRETION TO REFUSE APPELLANT'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT

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.

Under section 38(a), the Police have 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. In order to

determine whether the records qualify for exemption under section 38(a), I will first consider whether any of the section 8 exemptions claimed by the Police apply.

LAW ENFORCEMENT

Turning first to sections 8(1)(a) and (b), these sections read as follows:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

The purpose of these exemptions is to provide the Police with discretion to deny access to records in circumstances where disclosure could reasonably be expected to interfere with an ongoing law enforcement matter or investigation. The Police bear the onus of providing evidence to substantiate that (1) a law enforcement matter or investigation is ongoing; and (2) that disclosure of the records could reasonably be expected to interfere with the matter or investigation.

I am satisfied that the Police engage in “law enforcement” activities, as defined in section 2(1) of the Act.

The Police submit that the matter to which the records relate is presently under investigation and have provided documentation to support this claim. The Police also submit that disclosure of the records would interfere with this ongoing law enforcement investigation.

Based on the representations provided by the Police and the affected person and my review of the records, I find that they contain information which relates to an ongoing law enforcement investigation, and that disclosure of this information could reasonably be expected to interfere with the investigation. Therefore, the records qualify for exemption under sections 8(1)(a) and (b) and are exempt under section 38(a) of the Act.

It is not necessary for me to consider the possible application of sections 8(1)(f), 8(2)(a) and (c), 14(1) and 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ July 22, 1998