



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1140

Appeal MA-980118-1

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 access to a complete copy of a report or any accompanying information relating to any complaint or allegations made about the requester. The Police located a one-page occurrence report and two pages of police officer's notes created as a result of the contact which gave rise to the preparation of the report. The Police denied access to these records, claiming the application of the following exemptions contained in the Act:

- endanger life or safety - section 8(1)(e)
- facilitate commission of an unlawful act - section 8(1)(l)
- 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 decision of the Police to deny access to the information contained in the responsive records.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined to mean, in part, recorded information about an identifiable individual. I have reviewed the records and find that they contain the personal information of the appellant, as well as that of another identifiable individual (the affected person).

INVASION OF PRIVACY

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 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.

In this situation, 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 claim that the presumption in section 14(3)(b) applies to all of the information in the records as it was compiled as part of an investigation into a possible violation of law.

I am satisfied that the information contained in the records was compiled and is identifiable as part of a law enforcement investigation undertaken by the Police into allegations of criminal wrong-doing and that the disclosure of this information would constitute a presumed unjustified invasion of privacy under section 14(3)(b). Even if I were to find that any of the factors in section 14(2) 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) (1993), 13 O.R. (3d) 767 held that the considerations 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, the personal information in the records is properly exempt under section 38(b).

Because of the manner in which I have addressed the application of section 38(b) to the records, it is not necessary for me to apply sections 8(1)(e) and (l), 8(2)(a) and (c) or 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Adjudicator

July 28, 1998