



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1124

Appeal M-9800056

Sudbury Regional Police Services Board



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NATURE OF THE APPEAL:

The Sudbury 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 records relating to an investigation undertaken by the Police in 1981 which was reflected in a Statement-Police Report that accompanied the request. The requester is one of the individuals who was the subject of the investigation.

The Police refused to confirm or deny the existence of responsive records, claiming the application of sections 8(3) and 14(5) of the Act. The requester, now the appellant, appealed the decision.

Following receipt of the Confirmation of Appeal from this office, and within the time period prescribed, the Police indicated that they intended to rely on the application of the following additional exemptions to the responsive records, if they exist:

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

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties. The Police withdrew their reliance on sections 8(3) and 14(5), thereby confirming the existence of responsive records. I will not, accordingly, address the possible application of these exemptions to this appeal.

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, which consist of 18 pages of occurrence reports, supplementary reports and witness statements, and find that Pages 8, 10, 11, 13, 14 and 15 contain the personal information of the appellant, as well as other identifiable individuals. The remaining pages contain only the personal information of other identifiable individuals.

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.

Where, however, the record only contains the personal information of another individual, section 14(1) of the Act prohibits the Police 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.

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.

The appellant submits that he is entitled to the records because of the application of sections 14(1)(a) and (c). I have not been provided with the written consent of the individuals whose personal information is included in the records. Section 14(1)(a) does not, therefore, apply. Further, the personal information was not collected or maintained specifically for the purpose of creating a public record under section 14(1)(c).

The appellant also argues that the factors in sections 14(2)(a) (public scrutiny of an institution), (d) (fair determination of his rights) and (e) (unfair exposure to pecuniary or other harm) are relevant in determining whether the disclosure of the information constitutes an unjustified invasion of personal privacy under section 14(1)(f).

I am satisfied that the information contained in all of the records was compiled and is identifiable as part of a law enforcement investigation undertaken by the Police into allegations of criminal wrongdoing 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) 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 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 which relates to the appellant and other identifiable individuals is properly exempt under section 38(b). The personal information in the records which relates to other identifiable individuals is exempt under section 14(1).

ORDER:

I uphold the decision of the Police.

Original signed by: _____

_____ June 17, 1998

Donald Hale
Adjudicator
(formerly Inquiry Officer)