



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-1144**

## **Appeal M-9800060**

### **South Bruce-Grey Police Services Board**



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## **NATURE OF THE APPEAL:**

The Hanover Police Services Board (the Hanover Police) received three requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requests were for access to ten specified occurrence reports prepared by the Hanover Police following complaints made by or against the requesters. The requesters are involved in a number of on-going disputes with their neighbours and other individuals and have commenced legal proceedings against both the neighbours and the Hanover Police as a result of these incidents.

In November 1997, the Hanover Police determined that, in their view, the requests were frivolous and vexatious under section 4(1)(b) of the Act and declined to respond further to them. Their reasons for reaching this conclusion were provided to the appellants, who filed an appeal of this decision with this office.

Effective January 1, 1998, the Hanover Police were incorporated into the new South Bruce-Grey Police. Accordingly, the South Bruce-Grey Police Services Board (the Police) assumed responsibility for the processing of the appellants' requests and subsequent appeal.

Following mediation efforts with this office, the Police located nine of the ten requested occurrence reports and advised the requesters that the remaining record, dating from an incident in September 1995, had been automatically purged from its record-keeping system prior to the date of the requests. Access was granted to portions of the nine remaining responsive records. Access to the undisclosed information contained in these records was denied on the basis that it was exempt under the invasion of privacy exemption in section 14(1) of the Act. Following discussions with this office in relation to the frivolous and vexatious determination made by the Hanover Police with respect to the appellants' requests, the Police also withdrew their reliance on section 4(1)(b). The original appeal against the Hanover Police decision was then closed by our office.

The requesters, now the appellants, then appealed the decision of the Police to deny access to the undisclosed information. In addition, the appellants submit that the search undertaken by the Police for the tenth occurrence report was inadequate.

A Notice of Inquiry was provided to the appellants and the Police. Because the responsive records appeared to contain the personal information of the appellants, the parties to the appeal were asked to make submissions on the possible application of section 38(b) of the Act, as well as section 14(1). Representations were received from both parties.

In their representations, the appellants allege that initially, in response to their request, the Hanover Police had determined that their requests were frivolous and vexatious. As noted above, this position was later withdrawn by the Police and the appellants were provided with a decision letter granting access in part to the records. The appellants allege that because they are involved in civil proceedings against the Hanover Police and the Deputy Chief of the South Bruce-Grey Police Services Board, this may have had an impact on the decision by the Police that the requests were frivolous and vexatious. In addition, the appellants allege that the ongoing litigation with the Hanover Police may have prejudiced them to the extent that the South Bruce-Grey Police Services Board did not conduct a reasonable search for all of the requested records.

As a result of these allegations of bias on the part of the Police, the parties to the appeal were asked to respond to a Supplementary Notice of Inquiry which requested submissions on the issue of the appropriateness of the Police's handling of the appellants' request. Additional submissions were received only from the Police with respect to this issue. I will address the questions raised in the Supplementary Notice of Inquiry as a preliminary issue.

## **PRELIMINARY ISSUE:**

### **BIAS**

The parties were asked to address a number of questions relating to the bias allegations made by the appellants in order to assist me in determining whether this issue had any foundation. The Deputy Chief of Police, who was the former Chief of the Hanover Police, made the decision to deny access to parts of the record under section 14(1) and has responded to the Supplementary Notice of Inquiry on behalf of the Police. His submissions include a copy of the Statement of Claim dated December 29, 1997 which was filed and served by the appellants in their action against the Hanover Police Services Board, the Town of Hanover, the former Chief and another officer. This document has provided me with information as to the nature of the action initiated by the appellants and the parties to that proceeding. I note that the Deputy Chief is named as one of the Defendants in the action in his capacity as the former Chief of the Hanover Police, charged with the supervision, training, direction and control of the officers employed by the Hanover Police Service. The Statement of Claim does not allege any tortious conduct on the part of the former Chief in his personal capacity.

The Deputy Chief points out that the action was begun in late December 1997. The requests to the Hanover Police which gave rise to this appeal were made in July, September and November 1997. The original decision letters which form part of the subject matter of this appeal were provided to the appellants by the Hanover Police in August and September 1997. The final decision letter by which the Police withdrew their reliance on the frivolous and vexatious provisions in section 4(1)(b) of the Act and claimed the application of the exemption in section 14(1) was provided to the appellants in February 1998, following discussions with staff of the Commissioner's office. Accordingly, the Deputy Chief states that:

the large majority of my decisions was made prior to the litigation being served on the [Hanover] Police Service. Any decisions since the serving of the litigation have been in response to the Commission's [this office] request to support my decisions with stated case files and statute sections which I have done.

The Deputy Chief also indicates that "The only addition to my original letter of decision was to provide more access subsequent to the litigation."

As to the questions in the Supplementary Notice of Inquiry pertaining to the possibility of personal bias on the part of the Deputy Chief, he responds by indicating that he has no pecuniary interest in the subject

matter of the request in his personal capacity. He notes that his involvement in the litigation is purely as a result of his position as the former Chief of the Hanover Police.

I have reviewed the submissions of the Deputy Chief, apprised myself of all of the circumstances surrounding this case and have come to the following conclusions:

1. I find that the actions of the Deputy Chief in responding to the appellants' requests were in accordance with the obligations imposed on him as the Freedom of Information and Privacy Protection Co-ordinator for the Hanover and then the South Bruce-Grey Police Service under the Act. When apprised by this office that section 4(1)(b) was unlikely to be upheld in the circumstances of this case, the Deputy Chief promptly responded with an amended decision letter withdrawing this claim and granting access to the majority of the information contained in the responsive records.
2. The Deputy Chief has no pecuniary or other personal interest in the litigation. His involvement is solely in his capacity as an employee of the former Hanover Police Service.
3. I find that in the circumstances of this appeal, the fact that the appellants are involved in litigation involving both the Deputy Chief and the former Hanover Police Service does not create a situation where it would be unfair for the Deputy Chief of Police to make a decision in response to a request by the appellants, an opposing party to the litigation. In my view, particularly in light of the decision which was reached by the Deputy Chief on behalf of the Police to disclose the vast majority of the information in the records to the appellants, unfairness cannot be inferred in these circumstances.
4. I find that a well-informed observer would not have a reasonable suspicion that the Police could not have made an impartial decision in the circumstances of this case. Most of the decisions by the Police which have given rise to this appeal occurred prior to the commencement of the litigation and the subsequent decisions made by the Police have entirely favoured additional access to the requested information by the appellants.

To summarize, I find that the allegations of bias against the Deputy Chief and the Police are without merit and I will not address them further in this order.

## **DISCUSSION:**

### **REASONABLE SEARCH**

Where an appellant provides sufficient details about the records which he or she is seeking and the Police indicate that such records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge their 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 records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

The Police have provided me with a detailed description of the steps taken to identify and locate the requested records. I note that the Police were able to locate nine of the ten occurrence reports which formed the basis for the requests. I am satisfied that their search for these records was reasonable and I dismiss this portion of the appeal.

The Police have also provided me with an affidavit from their Administrative Assistant and Office Manager in which she describes in detail the steps which she took to locate the tenth occurrence report from September 1995. The Police have also provided me with their records retention schedule and an explanation as to why the requested document no longer exists in their record-keeping systems.

Based on the information provided to me, I am satisfied that the search undertaken by the Police for the September 1995 occurrence report was reasonable and I dismiss this part of the appeal.

## **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The appellants submit that since their requests only sought access to the names of the complainants which are included in the records, it is not a request for personal information as defined in the Act. The appellants argue that a request for a name alone cannot be considered to be a request for personal information about an identifiable individual. In support of this position, the appellants rely on the decision of former Commissioner Sidney Linden in Order 27 where he held that:

if the record contains only the name of an individual, it could not be considered "personal information" according to the subsection 2(1) definition. A name alone cannot be considered "recorded information about an identifiable individual". This interpretation is supported by subparagraph (h) of the definition of personal information which includes the name of an individual within the definition of personal information "...where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual".

However, in Order 27, former Commissioner Linden goes on to state that in the circumstances of that case, the name of the individual does not appear alone, but, rather, is in the context of a request for information

under the Act. He went on to find that disclosing the name of the individual contained in the record would reveal both the fact that this individual had submitted a request under the Act and the nature of that request.

I find that the circumstances in Order 27 to which the appellants refer are not applicable to the present appeal. The appellants' requests, in this case, were for all of the information contained in certain specified occurrence reports, the appellants did not indicate that they were only seeking the names of individuals who might be listed therein.

In addition, I find that the names of the individuals do not appear in the records alone. Rather, they are referred to in the records in the context of various complaints, including those which were initiated by the appellants, as was the case in the situation which gave rise to Order 27. Accordingly, I find that the disclosure of the names of the individuals contained in the records would reveal that they had been involved in certain police investigations either as complainants or as the subject of these inquiries. I find, therefore, that the information contained in the records qualifies as the personal information of these individuals, as well as the appellants.

## **INVASION OF PRIVACY**

Where a record contains the personal information of both the appellants and other individuals, 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 the information in the records as it was compiled as part of a number of investigations it had undertaken into possible violations of law.

The appellants do not refer specifically to any of the considerations listed in section 14(2) but their arguments lead me to assume that they believe that the disclosure of the remaining information contained in the records is relevant to a fair determination of their rights under section 14(2)(d).

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 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 the factor in section 14(2)(d), which is referred to by the appellants, 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 which relates to the appellants and other identifiable individuals is properly exempt under section 38(b).

**ORDER:**

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

Original signed by: \_\_\_\_\_

Donald Hale  
Adjudicator

\_\_\_\_\_ August 13, 1998