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

ORDER M-1132

Appeal M-9700346

Town of Amherstburg Police Services Board

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NATURE OF THE APPEAL:

The appellant submitted a three part request to the Town of Amherstburg Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to information relating to a particular incident concerning the appellant. In particular, the appellant asked for:

1. A letter from the Police Chief to a named individual;

2. A letter from the named individual to the Police; and

3. All statements, reports, records and notations regarding this matter, including board minutes wherein this matter was discussed. This applies to both public and in camera meetings.

The Police located responsive records and originally denied access to them on the basis of section 6(1)(b) of the Act. The appellant appealed this decision.

During mediation, the Police located the record responsive to the first part of the request and denied access to it on the basis of sections 14 and 38(b) (invasion of privacy) of the Act. This record has been included in this appeal. The Police also withdrew the application of section 6(1)(b) and disclosed additional information to the appellant. In their subsequent decision, the Police advised the appellant that the remaining records and parts of records were also being withheld on the basis of sections 14 and 38(b) of the Act. After reviewing the records which were disclosed to her, the appellant advised the mediator that she believed more records should exist.

Also during mediation, the appellant indicated that she is no longer pursuing access to pages 12-13, 18-19 (duplicates of pages 12-13) and page 24 of the records. As these records are no longer at issue, they have been eliminated from the scope of this appeal.

This office provided two Notices of Inquiry to the appellant, the Police and three individuals (the affected persons) whose interests might be affected by disclosure of the records at issue. The first Notice addressed the exemptions claimed by the Police. The second Notice asked the parties to address the issue of whether the search for responsive records was reasonable.

Representations were received from the appellant, the Police and two of the affected persons. In her representations, one affected person consented to the disclosure of her name, address and telephone number. This was the only information pertaining to this individual and is found on page 22 of the records. As no other exemptions have been claimed for this information, it should be disclosed pursuant to section 14(1)(a) (consent to disclosure). I have highlighted this information on the copy of page 22 which is being sent to the Freedom of Information and Privacy Co-ordinator for the Police along with this order. The other information which has been severed on this page remains at issue.

RECORDS:

The records at issue in this appeal are:

(1) Letter from the Police to a named individual. This record was specifically referred to in part one of the request;

(2) Copy of complaint - typewritten. This document corresponds to pages 3-4 of the records. [Duplicate pages are 14-15; 20-21].

(3) Copy of complaint - handwritten. This document corresponds to pages 5-8 of the records.

In addition to the records described above, the information severed on the basis of sections 14 and 38(b) located on pages 2, 16 [duplicate of page 2], 22 and 23 remains at issue. The remaining information at issue on page 2 is the personal information of an individual other than the appellant; the remaining information at issue on page 22 consists of names, addresses and telephone numbers of individuals and the information at issue on page 23 is the name of an individual.

DISCUSSION:

INVASION OF PRIVACY

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 all pertain to an incident involving the appellant and as such, contain her personal information. I also find that the records contain the personal information of other identifiable individuals. However, Record 1 is addressed to an individual in her capacity as a Girl Guide leader and refers to activities concerning the Girl Guides. In my view, this information does not qualify as personal information. Therefore, it is not exempt under either section 14(1) or 38(b). However, this record also contains the Girl Guide leader's home address and this qualifies as her personal information. I will consider this information in the discussion below.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the institution 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. The appellant is not required to prove the contrary.

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 records relate to a complaint brought against the appellant by a member of her community regarding certain comments concerning the Police made by her during a Girl Guide meeting. The appellant believes that the Police conducted an unlawful investigation into her actions as a result of this complaint. She indicates that she has initiated a complaint to the Police Complaints Commission (the PCC) as a result of the actions taken by the Police and she seeks the information in the records to support her claim.

She argues that this matter should not be characterized as a "law enforcement matter" as it does not pertain to the types of issues the Police are authorized to deal with. Accordingly, she submits that the presumption in section 14(3)(b) does not apply to the information in the records.

She further submits that the Police should have notified the affected persons to seek their consent and advises that certain individuals have told her that had they been notified, they would have consented to disclosure of their personal information. As I indicated above, notice was given in this inquiry to the affected persons, and as a result, only one person consented to disclosure of her personal information. This information will be provided to the appellant.

Finally, the appellant indicates that the Police released the complaint to the Girl Guides Division Commissioner. She argues that once a record is disclosed to a "member of the public", the Police can no longer claim that its disclosure would be an unjustified invasion of privacy. I do not agree with the appellant. The Police provided the Girl Guide Commissioner with a copy of the complaint as it directly pertained to matters of concern for the Girl Guides. The sharing of this information was done in a very different context from an access request under the Act, and was not disclosure under the Act. Therefore, I find that its previous release to a party outside the Police is not relevant in the circumstances of this appeal.

The Police indicate that the appellant is the wife of a police officer employed by the Police. The Police advise that they have had many dealings with the appellant concerning her husband's employment and the Police in general. In this case, the Police state that they received information that the appellant had made derogatory comments about the Police at a Girl Guide meeting in front of the girls present at the meeting.

The Police indicate that, pursuant to Section 41 of the Police Services Act, the duties of the Chief include ensuring that members of the Police carry out their duties and that discipline is maintained in the force. The Police state that they looked into the matter with the intent of stopping this kind of conduct from happening in front of young children. The Police do not claim that this investigation falls within their law enforcement mandate. Rather, their interest in this matter stems from a concern regarding their public image and the impact that such comments have on their relationship with the youth in their community.

The individual who brought this matter to their attention does not want this information to be disclosed as she considers it to be highly sensitive. She indicates further that it was given to the Police with an expectation that it would be maintained in confidence.

In reviewing the submissions and the records, it is apparent that the complaint was lodged because of a genuine concern for the effect that the appellant's conduct was having on the children who were present and the inappropriateness of the forum for such comments. In my view, the concerns articulated in the records are highly sensitive (section 14(2)(f)). I am also satisfied that they were provided to the Police in confidence (section 14(2)(h)). Similarly, I find that any references in the remaining records to the involvement of other individuals is also highly sensitive in this context.

I accept that this complaint has resulted in the involvement of the appellant with the Police, and that the appellant has initiated a complaint with the PCC. In my view, it is not the appellant's rights that will be affected by any investigation conducted in this regard, but rather the rights of the police officers named in her complaint. Accordingly, I am not persuaded that section 14(2)(d) (fair determination of rights) is relevant in the circumstances. Even if it were, it is apparent that the appellant is well aware of the nature of the complaint and, in my view, any further disclosure of the records would not assist her in bringing this complaint forward.

I further find that by bringing her complaint before the PCC, the appellant has effectively subjected the activities of the Police to public scrutiny and any further disclosure of the personal information in the records will not further this objective. Accordingly, I find that section 14(2)(a) is not relevant in the circumstances.

In weighing the rights of the appellant to her own personal information and the rights of the affected persons to the protection of their personal privacy, I find that, in the balance, the weight of the factors favouring privacy protection is significant. Therefore, I find that, apart from the highlighted portions of page 22, the records and parts of records at issue are 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 ensure 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 is one in which an experienced employee(s) expends a reasonable effort to locate records which are reasonably related to the request.

As I indicated above, the request was for the following:

1. A letter from the Police Chief to a named individual;

2. A letter from the named individual to the Police; and

3. All statements, reports, records and notations regarding this matter, including board minutes wherein this matter was discussed. This applies to both public and in camera meetings.

I have dealt with the record responsive to part one of the request above.

The appellant believes that the record responsive to part two of the request should be in the custody of the Police. The appellant argues further that a reasonable search for records responsive to part three of the request would have included such things as officers' notebooks, inter-office memos, action slips and police reports. She lists the types of records she would expect to see in a "lawful investigation".

The appellant also argues that records relating to the PCC complaint should be considered responsive to her request. I do not agree. In my view, the purpose of her request was to gain access to records relating to the incident so that she could use them to support her PCC complaint. I do not interpret her request so broadly as to include subsequent actions by the Police in response to her complaint or to the contents of the PCC file. If the appellant wants this information, she is free to submit a further access request to the Police.

The Police provided affidavits sworn by the Chief, the Police Services Board (the Board) Secretary, and the Freedom of Information and Privacy Co-ordinator. Each individual outlined the steps taken to search for responsive records. Essentially, each individual indicates that all Board records and all records of the Chief are located in the office of the Chief, in his desk, and in a filing cabinet. Further, all minutes of the Board meetings are also held in a filing cabinet in the Chief's office. These locations were all searched for records responsive to the request. In his affidavit, the Chief indicates that he has no recollection of ever receiving the particular letter which was specifically requested (in part two of the request). He indicates further that on a number of occasions, verbal reports were made to the Board. He states that a final report was not prepared.

I am satisfied that the searches conducted through the Chief's files and those relating to the Board were reasonable. I am also satisfied that the search for the particular letter referred to in the second part of the appellant's request was reasonable. Finally, I am satisfied that a final report does not exist. However, the appellant did not restrict her request to these areas. In my view, her request was much broader and was seeking any and "all" records pertaining to this matter. There is no evidence from the Police that they searched for records or queried the officers involved in the matter to determine whether they had responsive records. Nor do the Police address other locations, other than the Chief's files, which might contain records responsive to this request. I find that the scope of the Police's search was too narrow. Therefore, I find that the search for responsive records was not reasonable.

ORDER:

1. I order the Police to provide the appellant with a copy of Record 1, with the exception of the recipient's address, and the portions of page 22 which are highlighted in yellow on the copy of this page which is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order by sending her a copy by **August 26, 1998** but not before **August 21, 1998**.

2. I uphold the decision of the Police to withhold the remaining records pursuant to section 38(b) of the Act.

3. I find that the Police's search for the record responsive to part two of the request, records in the Chief's office and records relating to the Board was reasonable and this portion of the appeal is dismissed.

4. I find that the search for other records responsive to part three of the request was too narrow and therefore, not reasonable.

5. I order the Police to conduct a further search for other records, such as notebook entries, inter-office memoranda, telephone summaries and any other records which might exist at the Police station in files other than those belonging to the Chief and the Board, and to advise the appellant of the results of this search no later than **August 5, 1998**.

6. If, as a result of the further search, the Police locate additional responsive records, I order the Police to provide a decision letter to the appellant regarding access to these records in accordance with sections 19 and 22 of the Act, treating the date of this order as the date of the request.

7. I order the Police to provide me with a copy of the letter referred to in Provision 5 and a copy of the decision letter referred to in Provision 6 (if applicable) by forwarding them to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

8. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

Original signed by: July 21, 1998

Laurel Cropley
Adjudicator