



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

ORDER M-1137

Appeal M-9800108

South Bruce-Grey Police Services Board



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NATURE OF THE APPEAL:

The South Bruce-Grey 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 specific occurrence report prepared by the Police as a result of an incident involving the requester which took place in February of this year. The Police located the requested information and provided access to the majority of it. Access to portions of the responsive reports was denied under section 14(1) of the Act (invasion of privacy).

The requester, now the appellant, appealed the decision of the Police to deny access to the undisclosed portions of the records. A Notice of Inquiry was provided to the Police, the appellant and to another individual whose interests may be affected by the disclosure of the severed information which is contained in the records (the affected person). Because the records appeared to contain the personal information of the appellant and another identifiable individual, the parties were also asked to address the possible application of section 38(b) of the Act (invasion of privacy). Representations were received from the affected person and the Police only.

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 a one-page occurrence report and a one-page supplementary report, and find that they contain the personal information of the appellant, as well as 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.

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.

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 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) 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 undisclosed personal information in the records which relates to the affected person is properly exempt under section 38(b).

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Donald Hale
Adjudicator

July 22, 1998