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

ORDER MO-1170

Appeal MA-980145-1

Peel Regional Police Services Board

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NATURE OF THE APPEAL:

The Peel Regional Police Services Board (the Police) received a two-part request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The first part of the request was for access to all records relating to a complaint by a named individual against the appellant as referenced in notes made by a named police officer (which had been provided to the appellant pursuant to a previous access request). The appellant also asked, in part two of the request, for all records relating to a report he filed with another police officer on October 11, 1997.

The Police issued two decisions in response to this request.

In the first decision, dated May 13, 1998, the Police granted partial access to records relating to the report filed with the named police officer as requested in part two. Access to the remaining records responsive to part two was denied pursuant to sections 14(1)(f) and 38(b) of the Act. In addition, the Police advised the appellant that some information was being removed from the records as it does not pertain to his request.

In the second decision, dated May 15, 1998, the Police advised the appellant that the name which had been disclosed to him in response to his previous access request was disclosed in error as it was recorded in the police officer's notes in connection with an unrelated matter. The Police indicated that no records exist which relate to a complaint by this named individual against the appellant.

The appellant appealed the denial of access under sections 14(1) and 38(b) as referenced in the May 13, 1998 letter. As well, he appealed the decision in the May 15, 1998 letter on the basis that more records exist.

Subsequent to his appeal, the appellant filed a new request with the Police, which they divided into two parts. In the first part of the new request, he reiterated the first part of the request referred to above. In the second part he requested records relating to a particular 911 call placed by the individual named in part one of the first request. The Police provided partial access to records relating to the second part of the appellant's new request. The appellant believes that the two incidents referred to in the two parts of his second request (and in part one of the request which resulted in the current appeal) are one and the same.

In this regard, the appellant believes that this is evidence that more records exist in response to part one of his current request. The appellant did not appeal the decision which responds to his second request. He argues that the decision responding to his new request should be dealt concurrently with the current appeal.

This office provided a Notice of Inquiry to the Police and the appellant. Representations were received from both parties.

RECORDS:

The records at issue consist of severances made to pages four and seven of the police officer's notes.

PRELIMINARY ISSUE:

SCOPE OF THE CURRENT APPEAL

In his representations, the appellant indicates that he is not seeking a decision with respect to his second "request". He argues further that it should not have been divided into two parts. He believes that this letter, in its entirety, was simply a clarification of the first request and not a new request at all.

The Police indicate that, in the first request, the appellant was seeking records relating to a complaint made by a named individual against him. After issuing their decision, the Police spoke with the appellant on a number of occasions in an attempt to explain to him that information which had been previously released to him pursuant to another access request (for records relating to himself) should not have included any reference to the named individual as the matter pertaining to this named individual did not involve the appellant in any way. In other words, it was included in error as being responsive to the appellant's earlier request. The appellant was not satisfied with this response.

Shortly after these conversations the appellant wrote to the Police and indicated that the named individual had made a call to the Police. The Police again contacted the appellant and advised him that there was no complaint made by the named individual against him. The Police indicated that if the appellant believed that the named individual had made a 911 call to the Police, then this related to a different matter and the appellant would be required to submit a new access request. Although the appellant agreed to submit a new request, he maintained that the 911 call related to the complaint referred to in the named police officer's notes.

The Police determined that the "new request" contained two components. They issued a decision in response to the part of the "second" request relating to the 911 call and granted partial access to records responsive to this part of the request. As I indicated above, the appellant did not appeal this decision because he is of the view that it relates to his first request.

I have considered the representations on this issue and have reviewed the records. It is clear that the Police have made numerous efforts to explain the situation to the appellant who quite simply refuses to accept the explanation. In my view, however, the Police are completely correct in the explanations they have provided to the appellant. In reviewing this matter, I note that the 911 call made by the named individual does not relate to the appellant in any way, but to a different matter altogether. I find that the Police correctly interpreted the second "request" as a request under the Act and issued a decision with respect to it. The appellant did not appeal this decision and it will not be included further in this order.

Therefore, the only issues to be determined in this order are: whether the severances made to the records responsive to part two of the current request contain personal information and whether its disclosure would constitute an unjustified invasion of another individual's privacy; and whether the search conducted by the Police for records responsive to the first part of the request was reasonable in the circumstances.

DISCUSSION:

PERSONAL INFORMATION/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 I find that they contain the appellant's personal information. The information which has been withheld from pages four and seven consists of the telephone number and statement given by a witness to an incident involving the appellant. I find that the withheld information qualifies as the personal information of the witness.

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.

Section 14(3)(b) states that:

> A disclosure of personal privacy is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The appellant argues that the records all relate to him and that he has a right to obtain this information and to correct it if necessary. He also believes that his personal security is at risk because allowing these records to go uncorrected would leave him open to "unjust government misinterpretations", thus limiting his rights and freedoms.

In reviewing the records, I find that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the personal information in the records, because this information was clearly "compiled" and is "identifiable" as part of an investigation into allegations of assault on the appellant with a view to determining whether there was a possible violation of law under the Criminal Code.

I find that neither section 14(4) nor section 16 are applicable to the personal information at issue in this appeal. Accordingly, the withheld information is properly exempt from disclosure 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 insure 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.

As is apparent from the discussion above, much of the dispute between the appellant and the Police stems from the appellant's belief that the records which had previously been disclosed to him relate to a complaint made by a named individual against him. The appellant's representations focus on his second request (relating to the 911 call), because, as I noted above, he believes this relates to the complaint. As I found above, the two matters are entirely separate, and evidence of records relating to the 911 call is not evidence that records relating to a complaint against him exist.

The Police outline the steps taken to search for responsive records. The Police indicate that searches were conducted by a civilian Records Systems Operator (the Operator) in its Record Services division for any or all records relating to a complaint made against the requester in the previous two years (being the relevant time frame) by the named individual. In doing so, the Operator searched the Master Name Index under both the appellant's and the alleged complainant's names. None of the records which came up as a result of this search were responsive to the request. One of the records, however, consisted of an occurrence report involving the named individual. The Police determined that this record had been provided to the appellant in response to a previous access request and that its disclosure was made in error as the record does not relate to the appellant in any way.

The Police describe the communications which took place between them and the appellant (referred to above) and indicate that, at the appellant's request, they contacted the police officers involved. These police officers confirmed that the notation in one of their notebooks regarding the named individual did not relate to a complaint against the appellant.

Further, at the request of the appellant, the Police conducted a further search through the database for any records pertaining to the appellant's residence address between 1993 and the present. This search did not produce any responsive records.

Finally, the Police indicate that it is not possible that electronic records existed but no longer exist because they do not destroy any records that form part of their Master Index of names or addresses.

I have considered the representations submitted by both parties. In my view, the Police have conducted searches in the appropriate locations, and have canvassed those individuals who might have information relating to the matters referred to by the appellant, in order to determine whether responsive records exist. I am satisfied that the search conducted by the Police for records responsive to the first part of the appellant's request was reasonable.

ORDER:

1. I uphold the decision of the Police to withhold the information which has been severed on pages four and seven of the record.

2. The search for records responsive to part one of the request was reasonable and this part of the appeal is dismissed.

Original signed by: December 1, 1998
Laurel Cropley
Adjudicator