



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

ORDER MO-1204

Appeal MA-980321-1

Barrie Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Barrie Police Services Board (the Police). The request was for access to all police notes, complaints and records relating to the appellant during the past 12 months. The appellant specifically requested the notes made by four named officers.

The Police informed the requester that one of the officers did not have notes relating to the requester, and such records did not exist. Access was denied to the notes of another officer based on the provision found in section 52(3)1 of the Act. Partial access was granted to the notes of the other two officers, with exemptions made under section 14 (invasion of privacy) of the Act.

During mediation, the appellant narrowed the scope of the request to statements made by another individual about the appellant. The appellant accepts that the notes of the one officer do not exist, and that portions of the notes are not responsive to his request. He is also not seeking access to the police codes found in the records.

Also during mediation, the Police claimed the exemption found in section 38(b) for all records remaining at issue. The Police are no longer relying on the provision found in section 52(3)1 of the Act.

I sent a Notice of Inquiry to the Police, the appellant and the individual who made statements to the Police (the affected person). Representations were received from the Police and the appellant. The affected person telephoned this office to report that he had spoken to the Police who advised him of the contents of their representations. He advised that he was satisfied with what the Police had submitted, and would not be submitting representations of his own.

RECORDS:

During mediation, the appellant narrowed his request to statements made by the affected person to the Police. I have reviewed the records, and only Records 5 and 7 and parts of the audio tape and the Police Complaint Log form contain information made by the affected person about the appellant. Accordingly, Records 1-4, 6 and 8 are not at issue in this appeal.

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. This section states:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if 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;

The Police submit that the responsive information in the records at issue contains the personal information of both the affected person and the appellant.

The appellant states that the requested information relates only to the specifics of any complaint made by the affected person **about the appellant**. The appellant submits that the information is not “personal information” as defined in section 2(1) of the Act because it is not any of the types of information described therein, it in no way deals with any personal information about the affected person himself, and is merely a description of the words the affected person said about the appellant.

I disagree with the appellant. The appellant and the affected person have been involved in a number of incidents arising from a divorce and ensuing custody battle. These incidents have been sufficiently volatile to require the continued involvement of the Police. It is certainly clear from paragraphs (e) and (g) of the definition of personal information that the affected person's personal opinions or views about the appellant qualify as the personal information of the appellant and not the affected person. However, in my view, the affected person's name, age, sex, marital or family status, address, telephone number, personal opinions or views about the incident, as well as the fact that the affected person made a complaint to the Police and the details of his involvement in the incident, qualify as the personal information of the affected person. Accordingly, I find that the requested statements made by the affected person about the appellant qualify as the personal information of both the affected person and the appellant, pursuant to paragraphs (a), (d), (e), (g) and (h) of the definition.

Section 38(b) of the Act introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives him the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 38(b) applies, sections 14(2), (3) and (4) 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. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

If one of the section 14(3) presumptions applies, personal information can be disclosed only if it falls under section 14(4) or if the section 16 "public interest override" applies to it [Order M-1154; John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 (Div. Ct.)].

Section 14(3)(b)

The Police submit that the presumption found in section 14(3)(b) applies to the responsive parts of Records 5 and 7. This section states:

A disclosure of personal information 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;

Records 5 and 7 document two separate law enforcement investigations into alleged threats made by the appellant to the affected person. I am satisfied that the responsive portions of these records, being the statements made by the affected person about the appellant, were compiled and are identifiable as part of an investigation into a possible violation of law, and section 14(3)(b) applies.

Section 14(2)(g)

The Police have not made submissions on the application of section 14(2)(g) to the particular circumstances of this appeal, and I have nothing before me to substantiate the relevance of this particular factor. Accordingly, I find that section 14(2)(g) is not a relevant consideration in this appeal.

Section 14(2)

Sections 14(2)(d), (f) and (h) state:

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
 - (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
 - (f) the personal information is highly sensitive;
 - (h) the personal information has been supplied by the individual to whom the information relates in confidence;

Section 14(2)(d)

The appellant submits that he has commenced a defamation action against the affected person in an effort to get the affected person to stop making false allegations about him. He submits that the Police records are crucial in the context of the defamation action because he believes they will show a continuous pattern of defamatory statements made by the affected person against the appellant.

I am satisfied that the personal information which the appellant is seeking access to may have some bearing on the determination of the right in question, and I find that section 14(2)(d) is a relevant consideration.

Section 14(2)(f)

With respect to section 14(2)(f), the Police submit that the incidents involving the appellant and the affected person have been highly charged domestic/family incidents, and continue to date. The Police point to the content of the statements, the nature of the alleged threatening behaviour of the appellant, the custodial issues and the references within the statements to other involved individuals to support the relevance of section 14(2)(f).

The appellant submits that the information he has requested is not highly sensitive, because its disclosure would not cause excessive personal distress to the parties (Order P-434). He submits:

When an individual makes a complaint to the Police alleging criminal activity, the complainant never intends that this information be confidential. On the contrary, it is explicitly recognized by all parties that the information will become public.

When an individual makes a complaint to the Police, he will not only have to provide the Police with a written statement, but he will also have to be willing to stand as a witness at the trial and repeat the nature of his complaint in public in a court of law.

He also submits that section 14(2)(f) does not apply to information provided by those against whom complaints were made in direct response to such complaints (Order M-82). Finally, he submits that personal information is not highly sensitive where it relates to the identity of the complainant and the substance of the complaint (Order P-612).

In my view, section 14(2)(f) is a relevant consideration. Even if I shared the appellant's view of the absence of an expectation of confidentiality, the records in respect of which this section has been applied are not formal written statements provided to the Police as part of the complaint. These records are the audio tape recording of a telephone conversation between the Police and the affected person, and the notes made by the Police during that conversation.

Regarding the appellant's submissions that he has the right to "face his accuser" and his references to Orders M-82 and P-612, I note that the Police have provided the appellant with a severed version of Records 1, 2, 5, 6, 7, and 8 and all of Record 3. In my view, it is clear from his narrowed request that he is aware of the identity of the complainant, and from his direct involvement with the Police and the severed records, I am satisfied that he has been made aware of the substance of the complaint.

Section 14(2)(h)

The Police point out that the telephone conversation which generated the records at issue was initiated by the Police. They also indicate that the affected person was concerned enough about his safety to report the incidents involving the appellant to the Police. As a result, the Police argue that the affected person has every right to expect that the information he provided to the Police would be held in confidence. The Police argue that this is the very essence of establishing a trustworthy relationship between complainants/victims of crimes and their police service.

The appellant argues that the Police must prove that they gave assurances of confidentiality to the affected person when they received the information at issue. He argues that due to the nature of the complaint made, there could have been no expectation on the part of either the Police or the affected person that this information was to have remained confidential.

Given the circumstances under which the information was collected from the affected person, and the history of his involvement with the appellant, I am satisfied that section 14(2)(h) is a relevant consideration.

Summary

With respect to the responsive parts of Records 5 and 7, I found that the section 14(3)(b) presumption applies, and I uphold the application of section 38(b) of the Act.

With respect to the responsive parts of the audio tape and the Complaint Log form, having balanced the competing rights to privacy and access to information in the particular circumstances of this appeal, I find that the factors favouring privacy protection are more compelling, and disclosure of the responsive parts of these records would be an unjustified invasion of personal privacy. Accordingly, I find that the exemption in section 38(b) applies.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe

_____ April 21, 1999

Adjudicator