



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

ORDER MO-1208

Appeal MA-980274-1

Durham Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant is an insurance claims adjuster. He made a request on behalf of a named Youth Home to the Durham Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for records relating to an event involving an alleged criminal incident which occurred at the Youth Home.

The Police located responsive records and notified three affected persons to determine whether they would consent to disclosure of the information pertaining to them in the records. None of the affected persons responded to the Police. The Police subsequently denied access to the records in full on the basis of the exemptions in sections 8(2)(a) (law enforcement report), and 14(1)(f) (invasion of privacy). The Police informed the appellant that they had considered the application of section 14(1)(a) in making their decision.

The appellant appealed the decision of the Police to deny access to the records.

During mediation, the Police issued a revised decision in which they withdrew the discretionary exemption in section 8(2)(a).

I sent a Notice of Inquiry to the appellant and the Police. Representations were received from the Police only.

RECORDS:

The records at issue comprise 72 pages consisting of Incident and Supplementary Reports, medical records and medical authorization forms, witness and other statements.

DISCUSSION:

PERSONAL INFORMATION

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

The records contain the names, addresses and other personal identifying information of a number of individuals, including that of a child, his parent, and a number of employees of the Youth Home. The records also contain statements given by these individuals regarding the incident at the Youth Home, as well as medical information regarding the child. The records were created or compiled as part of, and relate to, an investigation conducted by the Police into the incident at the Youth Home. I find that the records contain the personal information of all of these individuals.

The Police submit that the records also contain the personal information of a number of other individuals who were involved as a result of the incident, such as a doctor and a caseworker with the Children’s Aid Society (the CAS). In this regard, the Police claim that they would not have contacted these people but for their investigation and, therefore, they were not functioning in their normal capacities as medical doctor or employee of the CAS when they provided information, but rather as witnesses in a police investigation. I do

not agree. It has been established by this office in previous orders that information provided by individuals in and as part of their professional capacities does not qualify as personal information (see Reconsideration Order R-980015 for a complete discussion on this issue). Previous orders have also recognized that even though information may pertain to an individual in that person's professional capacity (as is the case above with respect to the employees of the Youth Home), where that information relates to an investigation into or assessment of the performance or improper conduct of an individual, the characterization of the information changes and becomes personal information (Orders 165, P-447 and M-122).

I have reviewed the records and it is clear that the doctor and caseworker provided information to the Police in their professional capacities. Accordingly, I find that this does not qualify as their personal information.

The Police note that the appellant represents the Youth Home which is a custodial institution rather than an "individual" and submit that the records do not contain the personal information of either the Youth Home or the appellant. The phrase "about an identifiable individual" has been interpreted in previous orders as meaning that the information must relate to a natural person. In this regard, former Commissioner Sidney B. Linden found in Order 16:

The use of the term "**individual**" in section 2(1) of the *Act* makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "**identifiable individual**" to include a sole proprietorship, partnership, unincorporated associations or corporation, it could and would have used the appropriate language to make this clear. The types of information enumerated under subsection 2(1) of the *Act* as "**personal information**" lend further support to this conclusion.

I agree and find that the records do not contain the "personal information" of the Youth Home. I also find that the records do not contain any information regarding the appellant.

INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

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 [Order M-1154; John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 (div. Ct.)].

The Police submit that the presumptions in sections 14(3)(a), (b) and (h) apply to the personal information in the records. The Police also claim that the information is highly sensitive (section 14(2)(f)). These sections provide:

- (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,
 - (f) the personal information is highly sensitive;

- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
 - (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
 - (b) 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;
 - (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

The Police submit that the information contained in the records was compiled as part of a law enforcement investigation into an alleged assault against the child. The Police state that they are a law enforcement agency mandated under the Police Services Act with the responsibility of investigating offences under the Criminal Code. In this regard, the Police note that assault causing bodily harm is an offence under the Criminal Code.

With respect to the specific records, the Police indicate that some records, such as the Supplementary Reports and witness statements provided to the police were prepared by the police during their investigation. The Police note that other records, such as a statement written by a witness which was initially prepared by the Youth Home and medical information regarding the child were provided to the investigating officer to assist in his investigation.

The Police state further that some of the records contain references to the racial origin of several individuals. Finally, the Police claim that many of the records contain information relating to the medical and psychological condition of the child.

Upon review of the records, I am satisfied that they were all created or compiled by the police as part of their investigation into an alleged assault against the child. Therefore, I find that they were all compiled and are identifiable as part of an investigation into a possible violation of law (assault causing bodily harm which is an offence under the Criminal Code) and their disclosure would be a presumed unjustified invasion under section 14(3)(b) of the Act. The Police correctly note that the presumption only requires that there be an investigation into a possible violation of law, and it is not necessary for legal proceedings to have been initiated for the presumption to apply (Orders P-223, P-237 and P-1225).

I also find that some of the records provided by the hospital contain medical information pertaining to the child and the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 14(3)(a) of the Act. Finally, I agree that the references to the racial origins of individuals referred to in the records fall within the presumption in section 14(3)(h) of the Act.

Because I have found that the records fall under the presumptions in sections 14(3)(a), (b) and (h), it is not necessary for me to consider the application of the factors in section 14(2).

I am satisfied that section 14(4) has no application in this appeal. The appellant has not raised the possible application of section 16 of the Act, the so-called “public interest override”. In reviewing the circumstances of this appeal, I find that it does not apply. Therefore, I find that the records are properly exempt under section 14(1) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____ April 27, 1999
Laurel Cropley
Adjudicator