



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

ORDER MO-1178

Appeal MA-980195-1

London Police Services Board



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NATURE OF THE APPEAL:

The London 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 videotape in which the requester's young daughter gave evidence of alleged inappropriate behaviour on the part of the requester to representatives of the Police and the local Children's Aid Society.

The Police located the requested videotape and denied access to it, claiming the application of the following exemptions contained in the Act:

- sections 8(1)(d) and 8(2)(a) - law enforcement
- section 8(1)(l) - facilitate commission of an unlawful act
- section 13 - danger to health or safety
- section 38(a) - discretion to refuse requester's own information
- section 38(b) - invasion of privacy

The requester, now the appellant, appealed the decision of the Police to deny access to the videotape, which is the sole record at issue in this appeal.

A Notice of Inquiry was provided to the appellant, the Police and to the child's custodial parent (the affected person) on her own behalf and on behalf of the child. Representations were received from the Police and the affected person.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where 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.

I have reviewed the videotape which is at issue in this appeal and find that it contains the personal information of the appellant and his daughter, as well as that of the affected person. The videotape contains personal information about each of these individuals in addition to their names and other identifying information.

INVASION OF PRIVACY

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Police determine that the disclosure of the information would constitute an

unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

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 Ontario Court of Justice (General Division) determined in the case of John Doe et al. v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767, that 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.

If none of the presumptions contained in section 14(3) apply, the institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Police submit that the factors and presumptions in the following sections are applicable in determining that disclosure of the personal information would constitute an unjustified invasion of privacy: sections 14(2)(f) and (h), and 14(3)(b). I will begin with the presumption in section 14(3)(b).

Section 14(3)(b) provides that:

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;

The Police state that all of the information was recorded as a result of an investigation into allegations of sexual assault made against the appellant, a possible violation of the Criminal Code of Canada. The content of the videotape supports the position of the Police, and I find that the presumption in section 14(3)(b) applies to the personal information at issue in this appeal. None of the personal information contained in the videotape falls under section 14(4), and the appellant has not raised the possible application of section 16 of the Act.

Accordingly, I find that the information contained in the videotape qualifies for exemption under section 38(b) of the Act. Because of the manner in which I have addressed the application of section 38(b) to the videotape, it is not necessary for me to consider whether it is exempt under sections 8(1)(d) and (l), 8(2)(a), 13 or 38(a) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Adjudicator

_____ December 23, 1998