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

ORDER MO-1197

Appeal MA-980242-1

Durham Regional Police Services Board

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NATURE OF THE APPEAL:

The Durham Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for the names of three individuals allegedly involved in an accident in which the requester' son was struck in the head by a baseball. The requester indicated that she "[is] suing them for pain and suffering" as a result of injuries her son suffered in the accident.

The Police located three pages of responsive records, consisting of a General Incident Report (pages one and two) and a Supplementary Report (page three). The Supplementary Report contains the names of two of the individuals (the affected persons), but none of the records includes the name of the third individual.

In accordance with section 21(4) of the Act the Police notified the affected persons of the request, but one of the letters from the Police was returned unclaimed and no reply was received with respect to the other.

The Police provided the requester with access to the General Incident Report, but denied access to the Supplementary Report (the record at issue) on the basis of section 38(a) in conjunction with section 8(2)(a) (law enforcement report), and section 38(b) in conjunction with section 14(3)(b) (personal privacy/law enforcement investigation). The Police informed the requester that they had also considered section 14(1)(a) (consent to disclosure of personal information) in their decision.

The requester (now the appellant) appealed the decision of the Police to this office.

A Notice of Inquiry was sent to the appellant, the Police and the two affected persons. Representations were received from the appellant and the Police only.

DISCUSSION:

PERSONAL INFORMATION

The first issue which must be decided is whether or not the record at issue (the Supplementary Report) contains personal information and, if so, to whom the personal information relates. 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 [paragraphs (c), (h)].

The record contains a police officer's notes of an interview with the two affected persons. The notes recount the affected persons' version of events leading up to and following the incident in which the appellant's son was injured. Disclosure of the record would reveal the affected persons' names, addresses, telephone numbers and dates of birth, the name of the son and information about the incident in which all three individuals were allegedly involved, and information about prior and subsequent events allegedly involving all three parties. Accordingly, I find that the record contains the personal information of the affected persons and the appellant's son.

Since the appellant's son is less than 16 years of age, pursuant to section 54(c) of the Act, I will consider the personal information relating to the appellant's son in page three of the record to be the personal information of the appellant.

DISCRETION TO REFUSE ACCESS TO ONE'S OWN PERSONAL INFORMATION

Introduction

Section 36(1) of the Act provides individuals with a general right of access to their own personal information in the custody or under the control of an institution. Section 38 provides a number of exceptions to this general right of access. In particular, under section 38(b), a head may refuse to disclose to the individual to whom the information relates personal information where the disclosure "would constitute an unjustified invasion of another individual's personal privacy".

Section 14 provides guidance in determining whether or not disclosure would constitute an unjustified invasion of another individual's personal privacy. Section 14(2) lists criteria to be considered in deciding whether or not disclosure would constitute an unjustified invasion of privacy. Section 14(3) lists types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Ontario Court (General Division) Divisional Court determined in John Doe 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) 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 in section 14(3) applies, section 14(2) requires me to consider all relevant circumstances, including the factors specifically listed therein and any unlisted factors, in order to determine whether disclosure would constitute an unjustified invasion of personal privacy.

Representations

The Police submit that disclosure of the record is presumed to be an unjustified invasion of personal privacy pursuant to section 14(3)(b) of the Act, which reads:

> 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 explain that after the incident one of its officers attended at the appellant's residence "to learn about the incident and conduct an investigation in order to establish whether a criminal offence, such as criminal negligence or assault, had taken place. At that time, the identity of the three parties who caused the baseball to hit the requester's son in the head, was unknown."

The Police further explain:

> These individuals left the scene of the incident . . . feeling comfortable that the child's health was not in danger. [One of these individuals later] read about the child's injuries in the newspaper. Subsequently, two of the affected individuals attended this police service to make their identity known and advise the police of their involvement in this incident. Subsequent to interviewing them, [the investigating police officer] concluded his investigation and determined that no criminal investigation had taken place.

The appellant submits:

> [The Police] suggest that the presumption applies pursuant to section 14(3)(b) of the Act. However I disagree. I am enclosing a copy of [the General Incident Report]. You will note on page 2 the officer indicated that he answered a call to [an identified street address] for "an accident other call". Also enclosed is a newspaper article with respect to the incident where [a named police officer] said "as far as we are concerned it was an accident but we would like to talk to them to get the full story" about what happened.
>
> It is the submission of the Appellant that the presumption [at] Section 14(3)(b) does not apply as the information requested in the police report was not "compiled and is identifiable as part of an investigation into a possible violation of law". . .

The appellant goes on to explain why a consideration of the factors at section 14(2), including section 14(2)(d) ("the personal information is relevant to a fair determination of rights") should favour disclosure.

Section 14(3)(b)

I am persuaded by the explanation provided by the Police, as well as the contents of the records, that section 14(3)(b) applies to the information contained in the record at issue. The fact that the Police ultimately determined that no criminal charges should be laid since the injuries were caused by "accident" does not negate the fact that at the time the personal information relating to the affected persons was compiled, it was done so for the purpose of an investigation into a "possible" violation of law.

In addition, I find that section 14(4) of the Act has no application here.

Therefore, disclosure of the affected persons' personal information in the record is presumed to constitute an unjustified invasion of the personal privacy of the affected persons, and this information is therefore exempt under section 38(b) of the Act.

Finally, neither the records nor the representations of the appellant support a finding that section 16, the "public interest override", applies in this case.

Severance

Section 4(2) of the Act provides:

> If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

I found above that disclosure of the affected persons' personal information in the record is presumed to constitute an unjustified invasion of their personal privacy, and that this information is therefore exempt under section 38(b) of the Act. This finding clearly applies to the information from which the affected persons are "identifiable", as required by the section 2(1) definition of "personal information". Having carefully reviewed the record, I find that only the affected persons' names, dates of birth, addresses, telephone numbers and vehicle information fall within this category. In my view, once this information is removed from the record, the remaining information only relates either to the appellant or to other individuals, including the affected persons, who are not **identifiable** on the basis of this remaining information. Thus, the remaining information is either the personal information of the appellant, or does not meet the definition of "personal information" at all. Therefore, this information cannot constitute an unjustified invasion of the personal privacy of individuals other than the appellant. As a result, the remaining information does not qualify for exemption under section 38(b) of the Act.

Because of the manner in which I have disposed of the issues raised by this appeal under sections 2(1), 14, 38(b) and 4(2), it is not necessary for me to consider the application of section 14(2)(d) of the Act.

LAW ENFORCEMENT

I found above that the affected persons' names, dates of birth, addresses, telephone numbers and vehicle information qualify for exemption under section 38(b), but that the remaining information in the record does not so qualify. The next issue to be addressed is whether or not the exemption provided by section 38(a), in conjunction with section 8(2)(a), applies to the remaining information.

Section 38(a) reads:

> A head may refuse to disclose to the individual to whom the personal information relates personal information,
>
> > if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information;

Section 8(2)(a) reads:

> A head may refuse to disclose a record,
>
> > that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

The Police submit:

> The law enforcement matter in question is a report of a possible criminal offence, namely Criminal Negligence and/or Assault. The record contains a two-page initial report and a one page supplementary report which consist of the facts in this case, and the way the officer concluded his investigation. The officer investigated the situation, documenting his findings in this report.
>
> The [Police are] responsible for enforcing and regulating compliance with the Criminal Code of Canada as well as Provincial and Municipal Legislation; its powers are governed by Bill 107 of the Police Services Act.
>
> Section 42 of the Police Services Act outlines the duties of a Police officer which gives [named police officer] the authority to investigate the incident.
>
> . . . . .
>
> The record in question has been identified as a [Police] supplementary report. The author (police officer), was at the time of preparing the records, engaged in the conduct of an investigation. After considering the information received from the witnesses and affected individuals, the officer concluded that their accounts of the incident were the same. He therefore found that no criminal offence had been committed and filed the report inactive.
>
> It is therefore the position of this institution that the record is a report prepared in the course of law enforcement.

In Order MO-1196, Assistant Commissioner Tom Mitchinson stated the following with respect to the application of section 8(2)(a) to various police records, including occurrence reports, general incident reports and witness statements:

> Only a report is eligible for exemption under this section. The word "report" is not defined in the Act. For a record to be a report, it must consist of a formal statement or account of the results of the collation and consideration of information (Order P-200). Generally speaking, results would not include mere observations or recordings of fact (Order M-1048).
>
> The Police submit that the record is the complete account of an investigation of a sudden death, and is a report compiled by the Police, which has the function of enforcing the law pursuant to the Police Services Act.
>
> Having reviewed the various documents which comprise the record, I find that they neither collectively nor individually qualify as a "report". These documents consist almost exclusively of factual information provided by the individuals involved, together with observations by the investigating police officers. They do not contain a formal statement or account of the results of the collation and consideration of information. Rather, the contents are more appropriately described as a collection and recitation of "observations and recordings of fact". Therefore, I find that the record does not qualify as a "law enforcement report" and section 8(2)(a) does not apply, regardless of the fact that the record was prepared during the course of a criminal law enforcement investigation by an agency which has the function of enforcing and regulating compliance with the law.

In my view, the findings and conclusions of Assistant Commissioner Mitchinson in Order MO-1196 have equal application here. The record at issue in this case consists of factual information provided by the individuals interviewed by the Police, together with observations by the investigating officer. It does not contain a formal statement or account of the results of the collation and consideration of information. Rather, its contents are more appropriately described as a collection and recitation of "observations and recordings of fact". Therefore, I find that section 8(2)(a) does not apply to the record.

To conclude, I have found that the affected persons' names, dates of birth, addresses, telephone numbers and vehicle information qualify for exemption under section 38(b). The balance of the information in the record is not exempt under either section 38(a) or (b) of the Act.

I understand the appellant's desire to obtain the identity of the individuals allegedly involved in the incident in which her son was injured. However, in the circumstances of this appeal, where a presumed unjustified invasion of personal privacy has been established under section 14(3), the Divisional Court's decision in

John Doe indicates that the factors favouring disclosure under section 14(2) cannot overcome the presumption.

I note that on the issue of alternative methods of gaining access to personal information of an unidentified individual for the purpose of commencing or maintaining a civil action against the individual, Adjudicator Laurel Cropley in her Order M-1146 made the following comments which the appellant may find useful:

> I will now consider the extent to which the dog owner's address may be available by other means. First, with regard to the court, I have reviewed the relevant provisions of the Rules of Civil Procedure. I have also taken into account court practices of the Ontario Court (General Division) with respect to the commencement of civil actions.
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> The appellant could commence an action against the dog owner by way of a statement of claim under rules 14.03 and 14.07, even in the absence of a defendant's address. While form 14A of the Rules of Civil Procedure indicates that a plaintiff should include the name and address of each defendant in the statement of claim, in practice, the registrar will issue a statement of claim without a defendant's address, or with an "address unknown" notation . . .
>
> Once the claim is issued, the appellant, as plaintiff, could bring a motion under rule [30.10] for the production of the record in question from the Health Unit, in order to obtain the address . . .

These principles could apply where the name as well as the address of the potential defendant is unknown, by use of a pseudonym such as "John Doe" [see Randeno v. Standevan (1987), 61 O.R. (2d) 726 (H.C.), and Hogan v. Great Central Publishing Ltd. (1994), 16 O.R. (3d) 808 (Gen. Div.)].

ORDER:

1. I uphold the decision of the Police to withhold the portions of the record (the Supplementary Report) which I have highlighted on the copy of the record I have attached to the copy of this order sent to the Police.

2. I order the Police to disclose the remaining, non-highlighted portions of the record to the appellant by **April 27, 1999** but not before **April 22, 1999**.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: March 23, 1999
David Goodis
Senior Adjudicator