



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

# **ORDER MO-1222**

**Appeal MA-980319-1**

**Cornwall 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 Cornwall Police Services Board (the Police). The request was worded as follows:

1. - 95-1996 - Welfare investigation  
- [a named police officer] (Cornwall Police)  
- Video on file
2. - Information on Police Computer  
- Any other complaint on file
3. Under investigation/accused - abuse kids (molester)  
- complaint on file [Name of Appellant]  
- name of Police Officer in charge of the case.

The Police advised the appellant that no records exist (in their custody or under their control) respecting welfare related incidents which involve him in any manner. The Police also indicate that no records exist relating to child abuse or molestation related incidents which involve the appellant in any manner.

The Police provided the appellant with a one page record respecting a November 2, 1998 Highway Traffic Act (HTA) offence and part of another one page record respecting a September 10, 1998 incident. Access was denied to records respecting incidents on May 22, June 11, and September 27, 1998.

Where access was denied, the Police relied on sections 38(a) (with reference to section 8(2)(a)) and 38(b) of the Act. In a subsequent decision letter, the Police added sections 8(1)(e) and 13 as additional bases for the application of section 38(a).

The appellant appealed the decision of the Police to deny access to the records. The appellant specifically indicated that he wishes to pursue access to records relating to the May 22 and June 11, 1998 incidents only. He is also of the view that more responsive records exist in addition to those identified by the Police with respect to the May 22 and June 11, 1998 incidents.

## **RECORDS:**

The records identified as responsive by the Police for the May 22 and June 11, 1998 incidents consist of a one page printout for each incident.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details about the records which he is seeking and the Police indicate that such records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to

prove with absolute certainty that the requested 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 it has made a reasonable effort to identify and locate all records responsive to the request.

The Police submit that it uses OMPPAC as its computer-automated Records Management System. The retention period for all records stored on OMPPAC is governed by By-Law 5-90 of the Ontario Municipal and Provincial Automation Cooperative, a consortium of 54 police agencies. The Police explain that the retention period for records is based on the classification of the incident and the investigation status. The Police conducted a search for responsive records on both the active and archive databases. Only those records outlined in its response to the appellant were found. The Police submit that only paper reports of incidents which result in a charge being laid are kept on file and these records follow the same retention period as that of the OMPPAC system. Since the appellant was never charged with a crime, no paper records were found.

In addition, once mediation of this appeal had failed, the Police indicate that its Records Bureau supervisor was directed to conduct an additional search for records relating to the appellant. No additional records were located as a result of a secondary search. The Police remain confident in stating that no additional records other than those indicated in the response letter to the appellant exist.

Having reviewed the representations provided to me, I am satisfied that the search conducted for formal reports relating to incidents involving the appellant was reasonable in the circumstances. However, the records which were provided to the appellant suggest that other records might possibly exist, specifically Police officers notebook entries with respect to the identified contacts with the Police.

The representations of the Police only refer to a search for the formal reports. There is no evidence that a full search was conducted for other notebook entries which might be responsive to the appellant's request. Accordingly, I am not satisfied that the search for records was reasonable in the circumstances of this appeal.

## **PERSONAL INFORMATION**

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

The Police submit that the records contain personal information as described in sections (a), (b), (d) and (g) of the definition in section 2(1) of the Act.

Having reviewed the records, I find that they describe contact with the Police regarding incidents involving the appellant and other identifiable individuals. I am satisfied that these records contain the personal

information of the appellant and the other identifiable individuals. This personal information falls within sections (a), (b), and (g) of the definition.

## **INVASION OF PRIVACY/DISCRETION TO REFUSE APPELLANT'S OWN INFORMATION**

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(a) of the Act, the institution has the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

## **LAW ENFORCEMENT**

### **Section 8(2)(a)**

The Police submit that the records qualify for exemption under section 8(2)(a) of the Act. In order for a record to qualify for exemption under section 8(2)(a) of the Act, the institution must satisfy each part of the following three part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[See Order 200 and Order P-324]

I am satisfied that parts two and three of the test have been met, as the records relate to investigations by the Police which, in one case, resulted in the apprehension of the appellant under the Mental Health Act. I am satisfied that the records were prepared in the course of law enforcement by the Police, which is clearly an agency which has the function of enforcing and regulating compliance with a law.

The first part of the test requires that the records each qualify as a "report", which has been defined as "a formal account of the results of the collation and consideration of information gathered in the course of investigations or inspections" (Orders 200 and P-324).

Having reviewed the contents of each record, I am satisfied that they each qualify as a “report” for the purposes of section 8(2)(a). Each of the records documents the investigation and provides an account of the results of the officer’s consideration of the information gathered. Accordingly, as each part of the test has been met, I find that the records qualify for exemption under section 8(2)(a) and I uphold the application of section 38(a).

**ORDER:**

1. The search by the Police for records other than police officers’ notebooks was reasonable in the circumstances, and this portion of the appeal is denied.
2. I order the Police to conduct a further search, specifically for police officers’ notebook entries, and to communicate the results of this search to the appellant in writing by **July 15, 1999**. If responsive records are located, I further order the Police to provide an access decision to the appellant in the form contemplated by sections 19 and 22 of the Act, by **July 15, 1999**, without recourse to a time extension.
3. In order to verify compliance with Provision 2 of this order, I order the Police to provide me with a copy of any correspondence sent to the appellant pursuant to Provision 2 by **July 20, 1999**. These should be forwarded to my attention, c/o Information and Privacy Commission/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
4. I uphold the decision of the Police not to disclose the records at issue in this appeal to the appellant.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_ June 30, 1999