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

ORDER MO-1229

Appeal MA-980317-1

Guelph 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 Guelph Police Services Board (the Police). The request was for access to the Police file, including any witness statements and statements of any alleged accused, concerning an incident involving an assault on the appellant.

The Police provided the appellant with partial access to 20 pages of records. The Police denied access to portions of the 20 pages and to 12 additional pages in their entirety under sections 8 (law enforcement) and 14 (invasion of privacy) of the Act.

The appellant appealed the decision of the Police. During the mediation of the appeal, the appellant provided the Police with consent from two witnesses. These consents were specifically worded to apply only to the witness statements. The Police subsequently disclosed the statements to the appellant.

The appellant has confirmed that he is not seeking access to information marked "not responsive" by the Police. The appellant has also agreed not to seek access to the information withheld under section 8, specifically call type and zone information. Accordingly, this information, and sections 8 and 38(a) are not at issue in this appeal.

I sent a Notice of Inquiry to the Police, the appellant and two witnesses who provided statements to the Police. Representations were received from the Police and the appellant.

RECORDS:

The records consist of occurrence reports, witness statements and investigations record book pages. The pages remaining at issue are pages 2, 6, 13, 14, 19, 20, 23, 24 and 26-33.

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 appellant submits that there is no reason to conclude that the witness statements contain any substantive information that would fall under sections (a) to (h) of the definition of "personal information", with the exception of their address and telephone number. I disagree. It is clear from the wording of the statute that the list of examples of personal information under section 2(1) is not exhaustive. This leaves it open for the Commissioner or her delegate to decide whether or not information contained in records which does not fall under (a) to (h) constitutes personal information.

Having reviewed the records, I find that they all contain information which I consider to be information about identifiable individuals, including details such as whether the individual is a suspect or a witness, descriptions of the individuals' activities on the date of the incident, as well as their observations and

involvement in the incident, and the observations of others about them. In my view, this information qualifies as personal information according to the definition in the Act. Some of this information also relates to the appellant, and qualifies as his personal 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(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits an institution from releasing this information.

In both these situations, 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. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of factors set out in section 14(2). [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The Police have indicated that they are relying on the presumption found in section 14(3)(b) of the Act to support their decision not to disclose the records. 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.

The appellant concedes that the information was gathered by the Police as part of an investigation into a possible violation of law. However, he submits that, had charges been laid, these witnesses would very well have found their statements used as evidence in criminal proceedings, and they could have been subpoenaed

to testify. The appellant submits that it seems fundamentally unfair that the Police will withhold this same information, upon which it would have relied, from an assault victim who now has no choice but to proceed with a civil action.

Whether or not charges were laid, the presumption in section 14(3)(b) would apply to information compiled and identifiable as part of an investigation into a possible violation of law. And, despite the appellant's arguments under sections 14(2)(a) and (d), as mentioned above, the Ontario Court of Justice (General Division) Divisional Court determined in the case of 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.

Accordingly, I find that the presumption in section 14(3)(b) applies, and the information is properly exempt under sections 14(1) and 38(b) of the Act.

The appellant has raised the application of section 16, by indicating that he is seeking access to the records so that he may proceed with civil remedies as well as an application to the Criminal Injuries Compensation Board. This section states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

The appellant submits that, given the facts of this case wherein a victim has received what will likely be permanent injuries from an unprovoked assault, a compelling public interest exists in the disclosure of the witness statements in which personal information may be contained. In this vein, he refers to the case of R. v. Hanna (1997), 25 E.E.L.R. (N.S.) 296 (Ont. Prov. Div.), where Kitchen, J.P. comments:

> Therefore, even if an exemption is claimed by the defendant, it is the Courts opinion that there is a compelling public interest in the disclosure of the record. I am aware that these are not as serious as criminal charges, but the public has a vital interest in knowing that their business is conducted fairly and in compliance with the law.

In that case, the Court was reviewing an allegation that the Ministry of the Environment had breached the Canadian Charter of Rights and Freedoms under section 8, in that there was an unreasonable search and seizure by Ministry of the Environment investigators when they requested some documents from City of Niagara Falls officials. The above comments were made in the context of the Court's finding that the search and seizure were not unreasonable, because the City did not have a reasonable expectation of privacy with respect to the documents. In my view, a finding that there is a compelling public interest in the disclosure of

municipal government records to Ministry of the Environment investigators during an investigation, does not support a finding of a compelling public interest in this appeal. The appellant is seeking access to the personal information of witnesses and suspects in a criminal investigation in order to file a civil suit and pursue compensation from the Criminal Injuries Compensation Board. The information at issue is not required in order for the appellant to apply for compensation from the Criminal Injuries Compensation Board. In my view, the appellant's desire to launch a civil suit is essentially a private, as opposed to a public, interest, and the requirements of section 16 of the Act have not been met.

ORDER:

I uphold the decision of the Police.

Original signed by: August 19, 1999
Holly Big Canoe
Adjudicator