



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

ORDER MO-1217

Appeal MA-980338-1

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Halton Regional Police Services Board (the Police) for information concerning an incident which took place at a specific address in February, 1998. The appellant listed the names of the individuals who were involved in the incident. The appellant attached the consents of three of the named individuals to his letter of request.

The Police initially identified a one-page occurrence report as the responsive record and notified a fourth individual (the affected person) to determine whether this person would consent to disclosure of information in the records pertaining to him. The affected person did not respond to the Police. The Police issued a decision on December 10, 1998 in which they granted partial access to the record. Access to the remaining portions of this record was denied pursuant to the following sections of the Act:

- invasion of privacy - sections 14(1) and 38(b);
- law enforcement report/discretion to refuse requester's own information - sections 8(2)(a) and 38(a).

In appealing the denial of access, the appellant indicated that he believes more records should exist.

On March 1, 1999, the Police issued a second decision letter in which they indicated that more records exist. The Police granted partial access to these records, in part, on the basis of the consents provided, and indicated that the exemptions which had been claimed in the first decision letter also applied to the remaining portions of these records. Although not stated in its decision letter, a review of the records indicates that the Police have also withheld portions of a police officer's notebook as being not responsive to the request.

The second decision and the records which were subsequently located have been included in this appeal.

Following receipt of the second decision letter, the appellant indicated to this office that the portions of the police officer's notebook which are identified as being non-responsive are not at issue in this appeal. The appellant did not indicate, however, that he is satisfied with the search conducted by the Police. Therefore, the reasonableness of the search conducted by the Police remains as an issue in this appeal.

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

RECORDS:

The records at issue consist of the following:

- the withheld portions of a one-page occurrence report;
- one severance made to one page of a police officer's notebook; and
- portions of two statements.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. The records relate to an incident involving the appellant and the affected person which was witnessed by a number of other individuals. I find that they contain the appellant’s personal information as well as the personal information of the individuals referred to in the records, including the affected person.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the Police to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual’s personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual’s 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 Ontario Court of Justice (General Division) has stated 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.

Section 14(3)(b) states that:

A disclosure of personal privacy 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 the information about the appellant, the affected person and several witnesses in the records was recorded by a police officer as part of a law enforcement investigation into an alleged incident of threatening. The Police indicate that the police officer was investigating the possibility of charges under the Criminal Code. Although charges were not laid, the Police submit that the personal information at issue

was compiled and is identifiable as part of an investigation into a possible violation of law and its disclosure would constitute a presumed unjustified invasion of privacy.

I note that the Police have provided the appellant with a considerable amount of information regarding this incident. The remaining personal information relates to the appellant and the affected person and is so intertwined as to be unseverable. I find that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the remaining personal information in the records, because this information was clearly “compiled” and is “identifiable” as part of an investigation into allegations of criminal activity (threatening, which is an offence under the Criminal Code). I am satisfied that this investigation was conducted with a view to determining whether there was a possible violation of law. The presumption may still apply, even if, as in the present case, no charges were laid (Orders P-223, P-237 and P-1225).

I find that neither section 14(4) nor section 16 are applicable to the personal information at issue in this appeal. Accordingly, the withheld information is properly exempt from disclosure under section 38(b) of the Act.

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he is seeking and the Police indicate that further 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 further records do not exist. However, in my view, in order to properly discharge its obligations under section 17 of the Act, the Police must provide me with sufficient evidence to show that they have made a reasonable effort to identify and locate records responsive to the request.

The appellant did not submit representations, nor did he, in my view, provide any information throughout the appeals process to support his contention that more records should exist.

The Police indicate that they located the occurrence report requested by the appellant. In addition, the Police state that the investigating police officer was requested to, and did in fact, provide all notebooks and statements taken with respect to this incident. The Police state that no other records exist which are responsive to the appellant’s request.

Having reviewed the circumstances of this appeal and the representations before me, I am satisfied that the search conducted by the Police for records which are responsive to the request was reasonable.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Laurel Cropley
Adjudicator

_____ June 4, 1999