



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

# **ORDER MO-1235**

**Appeal MA-990115-1**

**Ottawa-Carleton Regional 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 Ottawa-Carleton Regional Police Services Board (the Police). The request was for access to a copy of Police report 98-132718, which named the appellant as a suspect with respect to allegations of theft.

The Police denied access to the records based on the exemptions found in sections 8(2)(a), 14(1), 38(a) and 38(b) of the Act. The appellant appealed the decision of the Police.

Mediation was not successful, and I sent a Notice of Inquiry to the appellant, the Police and two persons whose interests could be affected by the outcome of the appeal (the affected persons). Representations were received from the appellant and the Police. The Notice I sent to one of the affected persons was returned undelivered.

## **RECORDS:**

The record consists of a two-page General Occurrence Report, one page concerning information relating to items and costs/values, a one-page Statement of a Witness and two one-page Supplementary Reports.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records and, in my view, they contain the personal information of the appellant and the two affected persons. The information consists of their names, addresses, telephone numbers, the particulars of the complaint (including the description of the missing property) and the particulars of the information provided by the witness.

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.

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 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 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) or where a finding is made under section 23 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption.

The Police submit that the information falls within section 14(3)(b) of the Act, which 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 Police submit that the information was collected by members of the Police during investigations into an allegation that an offence under the Criminal Code may have been committed. The Police indicate that the information contained in the records was used to investigate the offence and determine if criminal charges were warranted.

I am satisfied that the information in these records was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the Criminal Code, and section 14(3)(b) applies. Although the appellant states in his representations that section 14(4) applies, I find that none of the circumstances outlined in section 14(4) which would rebut a section 14(3) presumption are present in this appeal. Accordingly, I find that these records qualify for exemption under section 38(b) of the Act.

The appellant submits that the Police did not properly exercise its discretion. The Police indicate that in exercising its discretion in favour of applying section 38(b) in these circumstances, it acknowledges that the appellant has an interest in the records. However, the Police also considered that the affected persons both objected to the disclosure of their personal information when notified of the request by the Police. In the circumstances, I see nothing improper with the exercise of discretion by the Police.

Finally, the appellant submits that section 16 of the Act operates to override the application of section 38(b) in the circumstances of this appeal. He does not, however, provide any submissions in support of this statement. Based on my review of the records, and having considered the representations provided by the appellant and all other related circumstances in this appeal, it appears that the appellant's interest in the records is a private one, relative to a civil action. I am not persuaded that there is a compelling public interest in the disclosure of these records.

Accordingly, I find that section 38(b) applies, and the records are exempt from disclosure to the appellant. In light of this finding, it is not necessary for me to consider the application of sections 8(2)(a) and/or 38(a) of the Act.

**ORDER:**

I uphold the decision of the Police.

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

\_\_\_\_\_ September 27, 1999