



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

ORDER MO-1268

Appeal MA-990140-1

London 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 London Police Services Board (the Police). The request was for access to records relating to an investigation of a break and enter and theft at the appellant's home.

The Police granted partial access to the records they identified as responsive to the request. Parts of the records were withheld under the following sections of the Act:

- law enforcement - sections 8(1)(d), 8(1)(l), 8(2)(a) and 38(a)
- invasion of privacy - sections 14 and 38(b)

The Police also indicated that Record 9 and parts of Records 10, 11 and 12 contain information which is not responsive to the appellant's request.

The appellant appealed this decision.

During mediation of the appeal, the Police disclosed the balance of the appellant's wife's witness statement on page 5 of the records and part of the "Concluding Report" on page 8 of the records.

A Notice of Inquiry was sent to the Police and the appellant. This Notice was also sent to the suspect in the investigation and a witness. Representations were received from all parties.

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 pertain to investigations by the Police into an alleged break and enter and theft which led to the suspect's arrest under the Criminal Code. As such, the records in their entirety contain the personal information of the suspect. The investigations involved contact with, and information provided by, other individuals (a witness and the appellant) and I find that this information clearly qualifies as their personal information pursuant to section 2(1) of the Act. Therefore, I find that the records contain the personal information of the appellant, the witness and the suspect.

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 Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

Section 38(b) of the Act introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the head the discretion to deny access to the personal information of the requester.

Sections 14(2), (3) and (4) 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 where 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 the factors set out in section 14(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

As stated above, in deciding that disclosure of the records would be an unjustified invasion of personal privacy, the Police rely on the presumption found in section 14(3)(b) of the Act.

Section 14(3)(b) of the Act states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (b) 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;

Both the suspect and the witness have objected to the disclosure of their personal information to the appellant. The information provided by these parties was clearly compiled and is identifiable as part of an investigation into a possible violation of law, in this case the Criminal Code and, therefore, the section 14(3)(b) presumption of an unjustified invasion of personal privacy applies. Consequently, in the circumstances, it is not necessary for me to consider the application of any of the factors weighing either for or against disclosure under section 14(2).

None of the personal information contained in these records falls under section 14(4) of the Act. In addition, the appellant has not raised the possible application of section 16 of the Act and I find that it does not apply.

Accordingly, I find that the information contained in the records qualifies for exemption under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by _____
Holly Big Canoe
Adjudicator

_____ January 11, 2000