



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

ORDER MO-1273

Appeal MA-990229-1

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 responded to the appellant's request. The appellant appealed the decision of the Police. That appeal was resolved by Order MO-1222, in which I ordered the Police to conduct a further search for additional responsive records, specifically for police officer's notebook entries.

As a result of the further search, the Police located four sets of notes relating to three incidents which occurred on September 27, 1998, June 11, 1998 and May 22, 1998 and an undated contact. After notifying the individuals identified in the notes, the Police denied access to them under sections 38(a) and (b) of the Act. The section 38(a) exemption claim was made with reference to sections 8 and 13 of the Act.

The appellant appealed the denial of access to the records by the Police. He has since confirmed that he is only seeking access to the entries related to the incident which occurred on June 11, 1998.

I initiated this inquiry by sending a Notice of Inquiry to the appellant. The appellant indicated that he would not be making written representations.

RECORD:

The record at issue consists of a police officer's notebook entry dated June 11, 1998 which relates to an incident involving the appellant.

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.

The records pertain to investigations by the Police into the appellant's conduct and his eventual apprehension under the Mental Health Act. As such, the records in their entirety contain the personal

information of the appellant. The investigations involved contact with, and information provided by, another individual and I find that this information qualifies as that person's personal information pursuant to section 2(1) of the Act. Therefore, I find that the records contain the personal information of the appellant and another identifiable individual (the affected person).

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.

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 him the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 38(b) applies, 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 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 the factors set out in 21(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

In deciding that disclosure of the records would be an unjustified invasion of personal privacy, the Police relied on the presumption found in section 14(3)(b) of the Act and the factors listed under section 14(2)(e) and (f).

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;

These records were created and compiled by the police in the course of apprehending the appellant under the Mental Health Act. The information provided by the affected person was supplied by this person for that purpose.

I am satisfied that the information provided by the affected person about the conduct of the appellant was compiled and is identifiable as part of an investigation by the police into a possible violation of law. Therefore, the section 14(3)(b) presumption of an unjustified invasion of personal privacy applies to the requested information even though, in this case, the police investigation resulted in the apprehension of the appellant under the Mental Health Act, and not a charge under the Criminal Code.

As stated above, where a presumed unjustified invasion of personal privacy has been established under section 14(3), the Divisional Court's decision in John Doe indicates that the factors favouring disclosure under section 14(2) cannot overcome the presumption. 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). Accordingly, I find that the information contained in the records is exempt under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Adjudicator

_____ February 3, 2000