



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

# **ORDER MO-1290**

**Appeal MA-990188-1**

**York 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 York Regional Police Service (the Police). The request was for access to information collected about the appellant relating to his application for the position of Police Constable.

The Police informed the appellant that the requested records, consisting of 80 pages documenting interview results and the Police background investigation of the appellant, fell outside the scope of the Act according to section 52(3)3 of the Act.

The appellant appealed the decision of the Police.

At mediation, the appellant withdrew his request for the records relating to the selection interview. As a result, Records 1-23 are no longer at issue in this appeal.

Also at mediation, the Police amended its decision, withdrawing its reliance on section 52(3)3 of the Act and claiming the exemption found in section 38(c) of the Act to Records 24-80, which relate to the background investigation.

I initially sent a Notice of Inquiry to the Police and the seven individuals who provided reference information regarding the appellant to the Police (the affected persons). Representations were received from the Police and one of the affected persons. The affected person who responded consented to the disclosure of the information he provided. The remaining affected persons did not respond to the Notice.

The Police had also denied access to Records 38-80 "because they are copyright forms". This position was withdrawn by the Police at the Inquiry stage of the appeal. In addition, the Police indicated that it had withdrawn its application of section 38(c) with respect to Records 24 and 25, and had limited its application of section 38(c) to parts of Records 26-29. Accordingly, I will include a provision in this order requiring the Police to disclose these records or parts of records.

I also sent a Notice of Inquiry to the appellant, enclosing a copy of the representations of the Police. The appellant did not provide representations.

## **RECORDS:**

The records at issue are Records 26-80, which relate to the background investigation of the appellant.

## **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 Police submit that all of the information qualifies as the personal information of the appellant only, relying on paragraph (g) of the definition of personal information, which includes as personal information “the views or opinions of another individual about the individual”. However, this paragraph should be read together with paragraph (e), which defines personal information to include “the views or opinions of the individual **except where they relate to another individual**” [emphasis added].

In this case, the views or opinions expressed about the appellant are provided in a context. Specifically, each affected person describes the nature of their interaction with or knowledge of the appellant. The context provides details about the affected persons which are not wholly their views and opinions about the appellant, but not severable from them either. Additionally, the names and addresses of each of the affected persons, and in some cases their employment information, is also provided. This information qualifies as information about the affected persons, and not the appellant.

Accordingly, in my view, Records 26-80 contain the personal information of both the appellant and the affected persons.

### **Evaluative or Opinion Material**

For a record to qualify for exemption under section 38(c), the Police must satisfy each part of the following three-part test:

1. the personal information itself must be evaluative or opinion material;
2. the personal information must be compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits;
3. disclosure of the personal information would reveal the identity of a source who furnished information to the Police in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence.

[Order 157]

Having reviewed the records and the circumstances of the appeal, I am satisfied that the first two parts of the above test have been met. The personal information is evaluative or opinion material and was compiled solely for the purpose of determining the appellant’s suitability for employment as a Police Constable.

In my view, in order for the third part of the test to more clearly address the complex wording found in section 38(c), it should be divided into two components. That is to say, the Police must establish that:

- (a) The information was supplied to the Police in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence; **and**
- (b) The disclosure of the record would reveal the identity of the source of the

information.

[Order M-132]

Because of the nature of the contextual information provided by each affected person, I am satisfied that in each case, the disclosure of the information provided by each of the affected persons would enable the appellant to identify the source of the information, and part (b) of the above test has been met.

With respect to part (a) above, reference information is typically collected from individuals who are identified by the appellant during the application process. However, the Police indicate that during the background investigation process, the investigating officer spoke to persons other than the references provided by the appellant. The Police indicate that the investigating officer in this case, as in most cases, did not rely exclusively on the appellant's list of references.

Although the Police indicate that the investigating officer informed each of the affected persons that they were providing information in strict confidence, they were also informed that this information may be disclosed in accordance with the Act. Further, the records at issue indicate that at least four of the affected persons were contacted because they were identified by the appellant as references. In these circumstances, in my view, it cannot reasonably be assumed that the identity of the source of this information would be held in confidence. Accordingly, section 38(c) does not apply to the information provided by these four affected persons.

With respect to the remaining three affected persons, I accept the evidence of the Police that it is reasonable to assume in the circumstances that the identities of these individuals as the source of the information would be held in confidence. Accordingly, I find that section 38(c) applies to the information provided by these three affected persons.

### **Invasion of Privacy**

Although I have found that section 38(c) does not apply to the information provided by four of the affected persons, I previously found that the information provided by these affected persons qualifies as the personal information of both the appellant and the affected persons. Accordingly, although not claimed by the Police, I am obliged to consider the application of section 38(b), which states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

One of the affected persons has consented to the disclosure of the information he provided. Accordingly, section 38(b) cannot apply to this information and it should be disclosed to the appellant.

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 14(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

Section 14(3)(g) states:

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

- (g) consists of personal recommendations or evaluations, character references or personnel evaluations.

It has been established that section 14(3)(g) raises a presumption concerning recommendations, evaluations or references **about** the individual rather than evaluations **by** that individual (Order 171). Accordingly, this presumption cannot apply to the information provided by the affected persons about the appellant.

The appellant has not submitted representations, but I have reviewed the factors listed under section 14(2) which favour disclosure, and I have determined that none of them apply.

Section 14(2)(h) reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (h) the personal information has been supplied by the individual to whom the information relates in confidence.

In their representations, the Police have established that each of the affected persons was advised that they were providing information in "strictest confidence". Accordingly, I am satisfied that section 14(2)(h), a factor which favours privacy protection, applies.

Having considered all of the circumstances of this appeal, and balancing the appellant's right of access to his personal information against the right of the affected persons to the protection of their privacy, I find that section 38(b) applies to the information provided by the three affected persons who have not consented to the disclosure of the information they provided.

**ORDER:**

1. I order the Police to disclose Records 35 and 71-80 to the appellant by sending him a copy by May 8, 2000, but not before May 2, 2000.
2. I order the Police to disclose Records 24, 25, and the parts of Records 26-29 which were not highlighted on the copy of the record sent to this office with the representations of the Police by sending him a copy by May 8, 2000, but not before May 2, 2000.
3. I uphold the decision of the Police not to disclose the remaining records.

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

\_\_\_\_\_  
March 30, 2000