



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

ORDER MO-1284

Appeal MA-990162-1

Niagara Regional Police Service



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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 Niagara Regional Police Service (the Police). The request was for access to an occurrence report and any other relevant reports and notes pertaining to an investigation by the Police into allegations made that the appellant had personated a police officer.

The Police notified two affected persons of the request. One affected person consented to partial disclosure of information relating to him, but later revoked this consent. The other affected person did not respond to the Police. The Police subsequently decided to deny access to all of the responsive records under sections 14 and 38(b) of the Act. The appellant appealed the decision of the Police to this office.

This office sent a Notice of Inquiry setting out the issues in the appeal to the appellant and the Police. Both parties submitted representations.

RECORDS:

The records at issue in this appeal are described as follows:

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|----------|---|
| Record 1 | Police officer's duty book notes |
| Record 2 | Police officer's duty book notes |
| Record 3 | Police general incident report and supplementary report |

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual [paragraph (h)].

The appellant submits that he is "not asking for 'third party' information." The Police submit that Record 2 contains the names and statements of individuals and that Record 3 contains the personal information (name, address, telephone number, date of birth) of one of the affected persons, as well as "a statement made by him and statements purportedly made by others as well as the actual statements of others". The Police further submit:

... The names and place of employment of these individuals as well as the address and telephone number of one of the individuals also form part of the notes and reports. Sections 2(1)(e) and 2(1)(g) appear to suggest that parts of the statements made about the appellant - "views and opinions" of him - are the personal information of the appellant,

however, if they are the personal information of the appellant, they are at the same time the personal information of the individuals giving the statements ...

Having reviewed the records at issue and the submissions of the appellant and the Police, I find that the records contain personal information relating to the appellant and affected persons. This information includes the views and opinions of the affected persons about the appellant, as well as statements relating to these individuals' involvement with the subject matter of the investigation. This information is "about" these individuals, and therefore qualifies as "personal information" within the meaning of the definition of that term in section 2(1) of the Act.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/UNJUSTIFIED INVASION OF OTHER INDIVIDUALS' PRIVACY

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 the personal privacy of other individuals, the Police have the discretion to deny the appellant access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits the Police from releasing this information.

In both these situations, 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 Police to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which 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].

In this case, the Police have cited the presumption in section 14(3)(b) (information compiled and identifiable as part of a law enforcement investigation). The Police submit that the records were created in the course of investigating an alleged offence under section 130 of the Criminal Code.

The appellant submits:

... [The affected persons] cannot have a reasonable expectation of privacy. [The affected persons] were not confidential police informants ... [S]omeone made scurrilous allegations against me, presumably to ... harm my reputation. Clearly, the person who complained to the police wished me charged. As such, the person(s) who complained to the police was a witness in a potential prosecution. Prosecutions are public matters. Surely, to now hide

behind the provisions of the [Act] under these circumstances, could never have been the intent of the legislation.

In my view, the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law. It is clear that the Police compiled these records to determine whether or not charges were warranted against the appellant under section 130 of the Criminal Code. As a result, the section 14(3)(b) presumption applies to this information.

Although the records contain some information relating to the appellant, I am satisfied that disclosure of any of the information in the records would constitute an unjustified invasion of the privacy of individuals other than the appellant.

In the circumstances, none of the factors at section 14(4) is applicable. Therefore, the records qualify for exemption under section 38(b) of the Act.

OTHER MATTERS

The appellant states that the Police request form “ask[s] why the requester wants the information,” and questions whether or not this is appropriate.

The Police request form contains the following statement:

PLEASE LIST ANY ADDITIONAL INFORMATION (INCLUDING REASONS FOR REQUEST)

In Order PO-1763, I stated:

The fact that the appellant may have “another, non-public purpose to the request” has no bearing on whether access should be granted under the Act. Section 4(1) grants a right of access to records not subject to an exemption, without qualification. A requester is not required to justify, or provide reasons for, his or her request [see Order M-96, upheld on judicial review in O.S.S.T.F., District 39 v. Wellington (County) Board of Education (February 6, 1995), Toronto Doc. 407/93 (Ont. Div. Ct.), leave to appeal refused (October 16, 1995) Doc. M15357 (C.A.)]. The only limitation to this principle is that access may be refused where the institution is of the opinion that the request is “frivolous or vexatious”, a claim that the OLC has not made in this case.

Based on this principle, in my view, the words “including reasons for the request” are not consistent with the purpose of the Act and I recommend that they be removed from the Police access request form.

ORDER:

I uphold the decision of the Police to deny access to the records under section 38(b) of the Act.

Original signed by: _____
David Goodis
Senior Adjudicator

_____ March 10, 2000