



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

FINAL ORDER MO-1286-F

Appeal MA-990234-1

Niagara Regional Police Services Board



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NATURE OF THE APPEAL:

This order represents my final order in respect of the outstanding issues from Interim Order MO-1275-I.

BACKGROUND:

The Niagara Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) from a lawyer representing two clients. The request was for “the information on file with [the Police] as referred to by [a named police officer] in his letter dated December 14, 1998.” This letter refers to records obtained from Bell Canada as a result of search warrants issued in 1995 and 1996 to trace telephone calls received by the appellant’s clients.

The Police granted full access to the search warrants, and denied access to the two call trace records (dated 1995 and 1996) pursuant to section 14(1) of the Act. The Police relied on the “presumed unjustified invasion of personal privacy” in section 14(3)(b) of the Act in support of the section 14(1) exemption claim.

The appellant appealed this decision.

After sending a Notice of Inquiry, receiving representations from both parties, and reviewing the records, I issued Interim Order MO-1275-I. In that order, I found that the records satisfied the requirements of section 14(3)(b) of the Act, but that the Police had improperly processed the request under Part I rather than Part II of the Act. As a consequence, the Police had failed to exercise discretion under section 38(b) of the Act, which provides the Police with discretion to balance two competing interests - the appellant’s clients’ right of access to their personal information and other identifiable individuals’ right to privacy. If the Police were to conclude that the balance weighs in favour of disclosure, the records could be released to the appellant, even if the Police have determined that this disclosure would represent an unjustified invasion of the other individuals’ privacy.

I included a provision in Interim Order MO-1275-I requiring the Police to exercise discretion under section 38(b) with respect to the records and to provide me with representations as to the factors considered in doing so. I received representations from the Police in compliance with this provision.

DISCUSSION:

Following the issuance of Interim Order MO-1275-I, I became aware that four entries contained in the records reflect calls made from phone numbers registered to the Police. These numbers do not relate to identifiable individuals, and for that reason the Police have agreed to issue a revised decision to the appellant describing these particular entries in detail. Because this revised decision letter will, in essence, provide the appellant with the content of these particular entries, no further action would appear to be required.

With respect to their exercise of discretion, the Police state:

I am of the opinion that, balancing the appellant’s clients’ right of access to their personal information and other identifiable individuals’ right to privacy, the balance does *not* weigh in favour of disclosure for the simple reason that the preponderance of the

information in the records is third party information. Only a very minute portion of the records is that of the appellant's clients, a portion which is easily severable and could, therefore, be released without necessitating an unjustified invasion of the privacy of the third parties. My opinion that this is so is not merely quantitative, but was influenced by the nature and circumstances of the investigation to which these records pertain.

My decision not to release this information even with the discretion to do so under section 38(b) is further determined, as I stated in my previous representations, by the fact that this record is not a Niagara Regional Police Service record, but a Bell Canada record which Bell Canada supplied to the Niagara Regional Police Service in confidence and which they do not wish released publicly.

An institution's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law. It is my responsibility to ensure that this exercise of discretion is in accordance with the Act. If I conclude that discretion has not been exercised properly, I can order the institution to reconsider the exercise of discretion [Order 58].

Having reviewed the reasons and rationale provide by the Police for exercising discretion under 38(b) of the Act, I find nothing improper. The Police have taken into account the competing interests of access and privacy protection, and have balanced these interests in favour of protecting the privacy of the various individuals placing calls to the appellant's clients. It is also clear that the Police have taken the particular circumstances of this case into account in exercising discretion in this manner.

FINAL ORDER:

I uphold the decision of the Police and find that the records qualify for exemption under section 38(b) of the Act.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ March 17, 2000