



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

ORDER MO-1331

Appeal MA-000001-1

London Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléco: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

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 a particular statement made to the Police by a named individual (the affected person) about the appellant.

The Police located this record and denied access to it based on the following exemptions contained in the Act:

- law enforcement - sections 8(1)(d), 8(1)(l) and 8(2)(a);
- danger to life or safety - section 8(1)(e);
- danger to safety or health - section 13;
- invasion of privacy - section 38(b) with reference to sections 14(2)(e), (f) and (h) and 14(3)(b); and
- discretion to refuse requester's own information - section 38(a).

The appellant appealed the denial of access to the record.

This office sent a Notice of Inquiry to the Police, initially. The Police submitted representations in response which addressed all of the exemptions at issue. After reviewing the file and the representations submitted by the Police, I decided to seek representations from the appellant only with respect to the application of section 38(b). I provided the appellant with a copy of the non-confidential portions of the Police's representations which address this issue. The appellant was asked to review the representations of the Police in preparing his response to the Notice of Inquiry which was sent to him. The appellant submitted extensive representations in response to this Notice. He has also submitted information to this office during the mediation stage of this appeal. As this information is not mediation privileged, I have also considered it as forming part of the appellant's overall representations in this matter.

RECORD:

The record at issue consists of the statement of the individual named in the request, which is approximately one and one-half pages in length.

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 note that the record at issue is a statement given by the affected person in relation to "a trouble with a man investigation". The Police indicate that the affected person requested their assistance in warning the appellant to stay away from her. The Police submit that the record contains the personal information of the affected person. The Police acknowledge that because the affected person speaks about the appellant in her statement, the record also contains his personal information.

The record at issue contains information about the affected person, including her name, age, family status, place of employment, as well as information about the events involving her and the appellant and her feelings and reactions to them. I agree with the Police that the record contains the appellant's personal information as this is all recorded information "about" the appellant. I find that the record also contains the personal information of the appellant in that it contains the affected person's description of him, his reasons for attending at the affected person's place of employment and his involvement in the events which led to the call being made to the Police. I find further that the information about the appellant in the record is so entwined with that of the affected person that it is not severable.

INVASION OF 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 institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

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 institution 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) [Order P-1456, citing John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The Divisional Court has stated that the only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption.

In this case, the Police have cited section 14(3)(b) in conjunction with section 38(b). These sections read:

38. A head may refuse to disclose to the individual to whom the information relates personal information,
 - (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
14. (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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;

The Police state that the personal information in the record was compiled and is identifiable as part of an investigation into a possible violation of law, in this case a complaint of “trouble with a man”. The Police indicate that as a result of the complaint, an investigation was conducted into a possible violation of section 264(1) of the Criminal Code relating to criminal harassment, which is commonly referred to as “stalking”. The Police note that as a result of their investigation, the appellant was warned by them to stay away from the affected person. The Police provided additional records to this office which confirm their investigation into the complaint. The Police also note that “it is this type of law enforcement matter that must be taken seriously by police given the numerous incidents throughout the city, province, country, where these types of incidents have escalated and had tragic results”.

The appellant has provided extensive representations which describe his own personal circumstances, his relationship to the affected person and to others and which explain how he has been impacted as a result of the actions initiated by the affected person and subsequently acted upon by others. It is apparent from his representations that the appellant is offended by the treatment he feels he has received generally, and from the Police in particular, and that he believes much of this stems from “lies” the affected person has told.

Based on the representations submitted by the Police and the supporting documents relating to their involvement in the matter, I am satisfied that the personal information in the record at issue was compiled and is identifiable as part of an investigation into a possible violation of law, specifically, section 264(1) of the Criminal Code and its disclosure would constitute a presumed unjustified invasion of privacy pursuant to section 14(3)(b) of the Act. This section only requires that the investigation be into a “possible” violation of law (Orders M-198, MO-1256, P-233, P-237, P-1225 and PO-1777, for example). Therefore, even though the Police did not bring criminal charges against the appellant the presumption in section 14(3)(b) may still apply.

I find that neither section 14(4) nor section 16 are applicable in the circumstances of this appeal.

As I indicated above, the record contains the personal information of both the appellant and the affected person. Section 38(b) is a discretionary exemption which provides the Police with discretion to balance two competing interests - the appellant’s right of access to his 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 individual’s privacy. 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 (Orders 58, MO-1286-F and MO-1287-I).

The Police indicate that they considered and weighed the appellant’s right to access to his personal

information in the record with the affected person's right to privacy and concluded that the affected person's privacy rights outweighed those rights of the appellant. In this regard the Police indicate that they considered the following:

- The affected person provided the information to the Police in confidence. The Police submit that it is important for individuals who contact them about concerns or complaints involving other people that they be assured that the information they provide to the police will remain confidential, or if disclosed, for the purposes of law enforcement only;
- Criminal harassment investigations are considered by the Police to be highly sensitive to the complainant/victim involved. The Police note that it is difficult for victims to come forward when incidents of this nature occur. The Police state that in their experience, victims reporting these types of incidents are generally very nervous, embarrassed and frightened;
- The affected person did not consent to the disclosure of her personal information;
- The nature of this type of incident (stalking) itself has the potential for harm to the victim. The Police believe that the affected person would not have complained to the Police if she was not frightened for her safety. The Police also note that they considered her complaint and concerns to be warranted and substantiated;
- The statement made by the affected person clearly indicates her state of mind regarding the appellant and the incidents involving him.

I am satisfied that the Police properly exercised their discretion under section 38(b), by taking into account all of the relevant circumstances of this appeal. In particular, the Police took into account the sensitive and potentially dangerous nature of the allegations which were being investigated, the fact that a conclusion had been reached by the investigating officers that there was substance to the complaint and the information in the record itself which reflects the affected person's subjective feelings about the matter. Viewed objectively, these factors are appropriate considerations for the Police to take into account in balancing the appellant's right to access against the affected person's right to privacy and in exercising their discretion not to release the record to the appellant. Accordingly, I find that the record at issue is exempt from disclosure under section 38(b).

ORDER:

I uphold the decision of the Police to withhold the record at issue.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ August 14, 2000