



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

ORDER MO-1317

Appeal MA-990342-1

Hamilton-Wentworth 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 Hamilton-Wentworth Regional Police Services Board (the Police). The request was for access to a specified occurrence report involving a police investigation into allegations of abuse of the appellant's infant son.

The Police located the responsive records and denied access to them, claiming the application of the following discretionary exemptions contained in the Act:

- section 38(a) - discretion to refuse requester's own information;
- section 38(b) - invasion of privacy;
- sections 8(1)(a), (b) and 8(2)(a) - law enforcement; and
- section 8(1)(f) - right to a fair trial.

The appellant appealed the decision of the Police to deny access to the records. This office provided a Notice of Inquiry to the Police requesting that they make submissions on the application of the exemptions claimed for the records. The Police provided representations which were shared, in part, with the appellant. The appellant did not make any representations in response to the Notice of Inquiry which was forwarded to him with the non-confidential submissions of the Police.

The records at issue in this appeal consist of an occurrence report prepared by the investigating officer, a report prepared by a dentist and the notes of the investigating police officer.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act defines the term "personal information", in part, to mean recorded information about an identifiable individual.

The records at issue in this appeal relate to the investigation undertaken by the Police into allegations of physical abuse of the appellant's infant son. I have reviewed the records and find that the occurrence report, the dentist's report and the police officer's notes all contain the personal information of the appellant, his son, the child's mother and other identifiable individuals. This personal information includes the names, addresses, telephone numbers, medical condition and other related information about each of these individuals.

I further find that the personal information of the appellant and the other individuals is intermingled to such an extent that attempting to sever only that information which relates to the appellant would not be possible.

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 an appellant and other individuals, as is the case with the records at issue in this appeal, and the Police determine that the disclosure of the information would constitute an unjustified invasion of the other individuals' personal privacy, the Police have discretion to deny the appellant access to that information.

In considering section 38(b), sections 14(2) and (3) of the Act provide guidance in determining whether disclosure would result in an unjustified invasion of the personal privacy of the individuals 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 in John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767, 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 section 14(2).

The Police claim that the disclosure of the records would constitute a presumed unjustified invasion of privacy as defined in section 14(3)(b), which reads:

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

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 submit that:

The records sought relate to the ongoing case and were compiled and are identifiable, as part of the above-referenced police investigation, which is for the purpose of determining whether there was a violation of the *Criminal Code of Canada* or other relevant legislation. As such, s.14(3)(b) and s.38(b) are applicable. [Order PO-1715]

Based on my review of the records and the representations of the Police, I find that the records at issue were compiled and are identifiable as part of an investigation into a possible violation of law, thereby satisfying the requirements of section 14(3)(b). The information in the records does not fall within the types of information listed in section 14(4) and the appellant has not raised the possible application of section 16.

The Police have provided me with representations concerning the exercise of their discretion not to disclose the records to the appellant, under section 38(b). In reviewing these submissions, I find that the Police have properly exercised this discretion in favour of denying access to the appellant under section 38(b) after weighing the appellant's right of access to this own personal information against the privacy interests of the other identifiable individuals.

Accordingly, I find that the records are exempt from disclosure under the discretionary exemption in section 38(b), as their disclosure is presumed to be an unjustified invasion of the privacy of the individuals other than the appellant whose personal information appears in the records.

Because of the manner in which I have addressed the application of section 38(b) to the records, it is not necessary for me to consider the possible application of sections 8(1)(a), (b), (f) and 8(2)(a) or section 38(a) to them.

ORDER:

I uphold the decision of the Police to deny access to the requested records.

Original signed by: _____
Donald Hale
Adjudicator

_____ June 29, 2000