



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

ORDER MO-1334

Appeal MA-000075-1

Waterloo Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant wrote to the Waterloo Regional Police Services Board (the Police) seeking access under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to records concerning an incident in which the Police attended at his home as a result of a 911 call made to the Police by an individual known to the appellant (the affected person). The appellant initially requested only his own personal information, on the understanding that he would be making a second request for information relating to the affected person at a later time.

The Police provided partial access to the eight records responsive to this request, claiming that portions of the records were withheld on the basis that they did not contain his personal information. The appellant appealed this decision to this office. During the mediation stage, the appellant abandoned his appeal since he was satisfied that all of his personal information had been disclosed to him.

The appellant later made a second request to the Police for the remaining information contained in the responsive records. The Police advised the appellant that the request may affect the interests of “third parties”, who would be given an opportunity to make representations concerning disclosure.

The Police then wrote to the affected person advising her of the request and seeking her submissions on whether or not her personal information should be disclosed. The affected person responded by advising the Police she did not consent to disclosure of her personal information. The affected person indicated that disclosure in the circumstances would be “inflammatory” and not in her best interests.

The Police then wrote to the appellant, stating that it had received representations from the affected person, and that the Police were denying access to the records on the basis of the exemptions at sections 8(2)(a) (law enforcement report) and 14(1)(f) (unjustified invasion of personal privacy). In support of section 14(1)(f), the Police cited the factors and presumptions weighing against disclosure in sections 14(2)(f) (highly sensitive personal information), 14(2)(h) (personal information supplied in confidence), and 14(3)(b) (personal information compiled as part of law enforcement investigation).

The Police also indicated that access was being denied to some information in the records because it was not responsive to the specific request.

The appellant appealed the decision of the Police to this office. In his letter of appeal, the appellant stated:

I am not asking for “personal information”, I am asking for the release of all information that resulted in my being stopped by the police, who were lying in wait at my place of residence

...

It seems to me that the invasion of personal privacy has been suffered only by myself.

When a complaint is made that results in a false arrest and detention of a citizen, based on unfounded allegations made by another citizen, surely the information that caused the police to act is not “personal information” of the complainant, but by its very nature is public

information that resulted in the use of public resources for the personal purposes of the complainant.

Section 14 concerned only with the protection of “personal information”, any personal information of [the affected person], address, phone number, date of birth etc. etc. is already known to me and is not in issue. The particulars of her false allegations against me however, can not be [categorized] as personal information relating to [the affected person].

It is my strong belief that there is no “personal information” of [the affected person], rather there is only false allegations made by her with respect to [the appellant].

I point out that there was no bona fide investigation, rather a knee-jerk response to an unfounded allegation made by an irate ex-spouse.

This is not the type of conduct that should be promoted or protected by the police through their refusal to deliver information.

It is my belief that [the affected person] has committed an offence. She has done so on a number of occasions by making false allegations and causing public resources to be used to conduct “investigations” for which there is no factual foundation.

During the mediation stage of the appeal, the Police provided the appellant with an occurrence summary relating to the incident, which outlines basic information about the matter, including a general description of the nature of the complaint. The appellant advised the mediator that he was not satisfied with the summary and still wished to pursue access to the information withheld from the records.

I sent a Notice of Inquiry setting out the issues in the appeal to the appellant initially. After receiving the appellant’s representations, I determined that it was not necessary for me to seek representations from the Police or the affected person.

RECORDS:

The information at issue in this appeal is contained in three pages of records, consisting of a police officer’s notebook excerpt, and two incident reports. An audio cassette of the affected person’s 911 call also is at issue.

DISCUSSION:

PERSONAL PRIVACY

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

The appellant submits that there is “no personal information at all involved in this case. The only

information that is requested is the record of a non-justified complaint.”

Based on my review of the three pages of records and the audio cassette, I am satisfied that the records contain personal information of both the appellant and the affected person, including their names, addresses and other personal information relating to their involvement in the incident in question.

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 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.

In this case, the Police have cited section 14(3)(b) in conjunction with section 38(b). Those 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 appellant makes extensive representations detailing the history of his legal and other interactions with various individuals and organizations. However, for the most part, these representations do not directly address the specific issues arising in this appeal, as described above and in the Notice of Inquiry sent to the appellant.

It is clear, based on the material before me, that the withheld information consists of personal information of the affected person, and that this information was compiled and is identifiable as part of an investigation into a possible violation of law. The Police compiled this information to determine whether or not charges were warranted under provisions of the Criminal Code or the Highway Traffic Act. The fact that ultimately no charges were laid does not negate the application of section 14(3)(b) of the Act [see, for example, Order P-242].

I am satisfied that disclosure of any of the information withheld by the Police would constitute an unjustified invasion of the affected person's privacy pursuant to section 14(3)(b). I am also satisfied that the Police have properly exercised their discretion under section 38(b) of the Act.

In his representations, the appellant submits that he, as well as every other citizen, has "the right to enjoy the security of my person and property, both of which were grossly violated on the night in question." He further submits that "I have every right to pursue whatever civil remedies flow from that violation, and there is no justification for the police to withhold the public records relating to the 'complaint'." In addition, the appellant argues that the information is not "highly sensitive", nor was it "supplied in confidence."

These representations suggest the application of the factor favouring disclosure at section 14(2)(d), and the non-application of two other factors favouring privacy, sections 14(2)(f) and (h), which read:

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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

Once a presumption under section 14(3) is established, that presumption cannot be overcome by one or any combination of factors under section 14(2). As a result, even if I were to find that section 14(2)(d) applied, the Police nevertheless may exercise their discretion to withhold the information in question on the basis of an unjustified invasion of the affected person's privacy.

Therefore, the withheld information qualifies for exemption under section 38(b) of the Act.

I note that although I am upholding the decision of the Police to deny access to the information at issue, the requested records may be accessible in the course of civil proceedings relating to this matter, despite the provisions of the Act [see section 51 and Order MO-1197].

RIGHT OF CORRECTION

The appellant submits that the information disclosed to him in the occurrence summary is either inaccurate or incomplete. Section 36(2) of the Act provides a right of correction, in certain circumstances. That section reads:

Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

In the circumstances, I am unable to make a determination on the issue of correction. Section 36(2) requires an individual to first make a correction request to the institution concerned although, pursuant to section 39(1)(c), any decision made by the institution in response to a correction request may be appealed to this office.

ORDER

I uphold the decision of the Police to withhold portions of the records at issue.

Original signed by: _____
David Goodis
Senior Adjudicator

_____ September 8, 2000