



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

ORDER MO-1324

Appeal MA-000117-1

Hamilton-Wentworth Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request to the Hamilton-Wentworth Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for records relating to a complaint made to the Police by the appellant that she had been sexually assaulted in 1979. The Police located the responsive records and granted access to them, in part. Portions of the responsive records were withheld by the Police, claiming the application of the following exemptions contained in the Act:

- section 8(2)(a) - law enforcement
- sections 14(1) and 38(b) - invasion of privacy
- discretion to refuse requester's own information - section 38(a)

In support of its application of the invasion of privacy exemptions in sections 14(1) and 38(b), the Police referred to the factors listed in sections 14(2)(e) (unfair exposure to pecuniary or other harm), (f) (highly sensitive information), (g) (information is unlikely to be reliable or accurate) and (h) (information supplied in confidence) and the presumption in section 14(3)(b) of the Act (information compiled and identifiable as part of a law enforcement investigation).

The appellant appealed the Police decision to deny access to the undisclosed portions of the records.

I first sought the representations of the Police and two other individuals whose rights may be affected by the disclosure of the information contained in the records (the affected persons). I received submissions from the Police, which were shared, in part, with the appellant. The appellant was also provided with a Notice of Inquiry soliciting her representations. The appellant made submissions in response to the Notice.

The records consist of the undisclosed portions of an occurrence report, two witness statements and a supplementary report prepared by the investigating officers.

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 submit that the records contain the personal information of the appellant, the suspect and several other identifiable individuals who were interviewed by the Police at the time of the investigation. The information consists of their names, addresses, telephone numbers as well as other personal information which was included in the statements which they provided to the Police.

Based on my review of the records, I find that they contain the personal information of the appellant, the suspect in the investigation and other identifiable individuals who provided information to the Police. This information includes their addresses and telephone numbers (section 2(1)(d)) and their names, along with other personal information relating to these individuals (section 2(1)(h)).

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. 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 23 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). 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 Police submit:

all information sought was compiled and is identifiable as part of an investigation into a possible violation of law.

...

“Compile means to collect, gather or assemble together. The term is intended to be applied comprehensively to all data, information and records gathered together by a police officer or agent in the conduct of a law enforcement investigation.

...

The violation of law would have been Rape or Sexual Assault pursuant to the *Criminal Code of Canada*. The officers in this case conducted an investigation. During this investigation, interviews were done with the suspect and affected individuals . . . The appellant also provided a statement to Police. The investigation was concluded that there was not enough evidence to proceed with a charge.

The appellant provided me with her submissions outlining her recollection of the events surrounding the investigation. However, 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.

Based on the material before me, I accept the submission of the Police that the withheld information consists of the personal information of individuals other than the appellant, and that this information was compiled and is identifiable as part of an investigation into a possible violation of law. It is clear that the Police compiled this information to determine whether or not charges were warranted under the provisions of the Criminal Code dealing with rape and sexual assault.

I am satisfied that disclosure of any of the information withheld by the Police would constitute an unjustified invasion of the privacy of individuals other than the appellant. Further, it is clear to me that the Police carefully considered each line of the record and provided the appellant with as much information pertaining to her as could reasonably be disclosed without unjustifiably invading the privacy of these other individuals. I am also satisfied that the Police properly exercised discretion under section 38(b), by taking into account all of the relevant circumstances of this appeal.

Therefore, the withheld information qualifies for exemption under section 38(b) of the Act. 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 whether they are exempt under sections 38(a) and 8(2)(a).

ORDER:

I uphold the decision of the Police to deny access to the withheld portions of the records.

Original signed by: _____

_____ July 24, 2000

Donald Hale

Adjudicator