



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

ORDER MO-1325

Appeal MA-000040-1

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 by the appellant that his wife had been sexually assaulted while a resident in a nursing home. The appellant provided the Police with a Power of Attorney granting him the right to act on behalf of his wife, who is suffering from dementia. Specifically, the appellant sought access to five Occurrence Reports dated May 16, 18, 26 and 27 and June 3, 1999 and the notes of the police officers involved in the investigation.

The Police located the responsive records and, after notifying five individuals whose rights may be affected by the disclosure of the information contained in the records under section 21 of the Act, granted access to some of the records, in whole or in part. Two of the notified individuals consented to the disclosure of their personal information while three refused to consent. The undisclosed portions of the records were denied pursuant to the following exemptions contained in the Act:

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

The Police referred to the following factors and presumptions listed in sections 14(2) and (3) in support of their claim under sections 14(1) and 38(b):

- unfair exposure to pecuniary or other harm - section 14(2)(e)
- the information is highly sensitive - section 14(2)(f)
- the information is unlikely to be accurate or reliable - section 14(2)(g)
- the information was supplied in confidence - section 14(2)(h)
- the information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation - section 14(3)(a)
- the information was compiled and is identifiable as part of a law enforcement investigation - section 14(3)(b)
- the information consists of personal recommendations or evaluations, character references or personnel evaluations - section 14(3)(g)

The appellant appealed the Police decision to deny access to the records.

During the mediation of the appeal, the appellant advised the Mediator assigned to the file that he was not seeking access to any information which is not related to the request; nor is he seeking access to the names, addresses or telephone numbers of any other individuals.

I decided to seek the representations of the Police initially and provided them with a Notice of Inquiry soliciting their position with respect to the application of the exemptions claimed. The Police made submissions, which were shared, in part, with the appellant. The appellant was then invited to submit representations in response to a Notice of Inquiry, which he did.

The records consist of five Occurrence Reports dated May 16, 18, 26 and 27 and June 3, 1999 (10 pages) and the notes of the police officers involved in the investigation (21 pages).

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 and his wife, 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 and his wife, the suspect in the investigation and other identifiable individuals who provided information to the Police. This information includes information relating to their medical, psychiatric or psychological history (section 2(1)(b)), 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 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 sections 14(3)(a), (b) and (g) 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,
 - (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
 - (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;
 - (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

The Police submit, with respect to the application of section 14(3)(a), that:

The information contained within the Sexual Assault investigation clearly contains medical information. This incident occurred at [the named nursing home] and thus the residents of the home are elderly people usually suffering from some medical condition. The appellant's wife is noted to suffer from dementia.

With respect to the application of section 14(3)(b), the Police indicate that:

. . . 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 office or agent in the conduct of a law enforcement investigation.

. . .

The violation of law would have been . . . 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's representations do not directly address the application of the personal information exemption in section 38(b) to the undisclosed information in the records. The appellant's submissions focus on the harm done to his wife and the fact that, in his view, inadequate steps were taken by the nursing home to protect her. The appellant insists that certain individuals who were interviewed by the Police in the course of their investigation gave very different accounts of the assault against his wife when he personally spoke with them from those provided to the Police.

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 his wife, 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 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 and his wife. 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 himself and his wife 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: _____
Donald Hale
Adjudicator

July 26, 2000