



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

ORDER MO-1387

Appeal MA-000178-1

Peel Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant submitted a request to the Peel Regional Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the notebook entries of two named constables relating to their attendance at her home on November 11, 1999.

The Police located the responsive records and granted partial access to them. The Police denied access to the remaining portions of the police officers' notes pursuant to section 38(b) (invasion of privacy) with specific reference to section 14(3)(b) (information compiled as part of an investigation into a possible violation of law) of the *Act*. In a subsequent decision, the Police identified and disclosed two additional pages of records, which were not available at the time of the original decision. The Police also provided the appellant with an index of records on which it was noted that portions of the police officers' notes had been withheld, as they were not responsive to the appellant's request. The index also contained the exemptions, which had been applied to each page of the records.

The appellant appealed the decision of the Police.

During mediation, the Mediator assigned to this appeal noted that the index prepared by the Police indicates that portions of page 3 of the records were withheld pursuant to section 14(1)(f) only, and after reviewing the record, raised the possible application of section 38(b) to this information. Also during mediation, the appellant indicated that she believes that all of the records are responsive to her request.

I sent a Notice of Inquiry setting out the facts and issues in the appeal to the Police, initially. I included, in addition to the exemptions claimed by the Police, the two issues raised in mediation. The Police submitted representations in response and the non-confidential portions of them were shared with the appellant. The appellant was asked to review the representations submitted by the Police and to refer to them where appropriate in responding to the issues set out in the Notice of Inquiry that was sent to her. The appellant did not submit representations in response to the Notice but relies on correspondence that she sent to me prior to the issuance of the Notice of Inquiry.

RECORDS:

The records consist of the withheld portions of the notes taken by the two police officers who attended at the appellant's home on November 11, 1999.

PRELIMINARY MATTERS:

NON-RESPONSIVE RECORDS

In Order P-880, former Adjudicator Anita Fineberg defined "responsive" as meaning "reasonably related to the request." I agree with this interpretation.

The Police submit that pages 2, 3, 6, 7, 8 and 10 of the records contain information that is not responsive to the appellant's request. In particular, the Police state that the non-responsive portions of these pages consist of information relating to calls from a previous day, or calls made prior and subsequent to dealing

with the appellant. The Police note that in order to comply with the requirements of the *Act*, pages of the officers' notebooks are provided which indicate ownership of the notebook and start of the working day and that in most cases these pages will also include information which is not relevant to a particular request.

Based upon my review, I agree that the portions of the records, which have been withheld as being non-responsive, in fact, do not pertain in any way to the appellant, but rather, contain information about other matters, which is routinely found in these types of documents. Therefore, I find that these portions of the records are not reasonably related to the appellant's request and were properly withheld as being non-responsive to the request.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the *Act* defines "personal information," in part, as recorded information about an identifiable individual. The Police submit that the records contain the personal information of an individual other than the appellant (the affected person) as defined in sections 2(1)(d) and (g) as they contain this individual's name, address, telephone number, date of birth and the statement he gave to the Police. I agree that the record contains this individual's personal information. I also find that the record, in its entirety, also contains the appellant's personal information since it pertains to a matter involving her.

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 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 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) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if 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 16 exemption.

The Police claim that all of the information which has been withheld from the records falls within the presumption in section 14(3)(b) of the *Act* as this information was compiled and is identifiable as part of a law enforcement investigation into an allegation of harassment. The Police state that in responding to the affected person's complaint, they attended his residence to investigate and determine whether the appellant should be charged with criminal harassment contrary to section 264 of the *Criminal Code*.

In exercising their discretion under section 38(b), the Police state that they consider the affected person's right of privacy to outweigh the appellant's right of access. In this regard, the Police state that the affected person sought the assistance of the Police to put an end to the appellant's harassment of him. In these circumstances, the Police believe that to share the information he provided to them would only serve to add to the problem. In particular, the Police state:

To share the information he provided to the Police would only serve to add to the unhealthy mental state of the appellant who, as stated by her to the Police and the Information and Privacy Unit of [the Police], is under severe mental stress and is being treated by a physician.

In her submissions, the appellant explains that she has been the subject of threats and extreme "mental torture" at the hands of a number of individuals and/or groups. She stresses her belief that the records contain false statements about her. She concludes that, "somebody has to pay for driving me to a mental illness."

The Police have provided the appellant with as much of the information in the records as they can without disclosing the affected person's personal information. In reviewing the remaining portions of the records, I concur with the Police that they contain information that was compiled and is identifiable as part of an investigation into a possible violation of law (the *Criminal Code*). Although much of this information pertains to the appellant, it also concerns the affected person and is so intertwined as to be unseverable. I therefore find that the disclosure of the remaining portions of the records would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the *Act*.

None of the provisions in section 14(4) apply to the information at issue in this appeal. The appellant has not raised the public interest override in section 16, nor do I find, independently, that it applies.

In considering the approach taken by the Police in exercising their discretion to withhold this information under section 38(b), I find that they have taken appropriate factors into consideration and this decision should not be disturbed on appeal. Accordingly, I find that the records at issue are exempt from disclosure pursuant to section 38(b) of the *Act*.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley
Adjudicator

January 12, 2001