



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

ORDER MO-1350

Appeal MA-000063-1

Durham Regional Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant made a request to the Durham Regional Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

- All reports by a named detective and two named constables regarding incident report #94-69820.
- My statement relating to the incident.

The incident referred to pertains to allegations of a sexual assault on the appellant.

The Police responded to the appellant's request identifying Incident Report 94-69820 as responsive to the request. The Police provided the appellant with partial access to the incident report including statements made by the appellant. The Police also stated that as the appellant requested personal information relating only to herself, information related to others had been removed from the record and marked as Non-Responsive.

The appellant appealed the decision of the Police indicating that she was seeking access to the entire file. In this sense, the appellant took the position that information relating to others in the record is responsive to her request.

During mediation, the Police issued a new decision with respect to the information they had previously identified as being not responsive to the request. The Police continued to deny access to this same information, however, on the basis of the exemptions in sections 14(1) and 38(b) (invasion of privacy) with reference to sections 14(2)(f), (i) and 14(3)(b) of the *Act*.

I sent a Notice of Inquiry to the Police, initially. The Police submitted representations in response. I sent a copy of these representations in their entirety to the appellant along with a Notice of Inquiry. The appellant did not submit representations.

RECORDS:

The records at issue consist of the withheld portions of the Incident Report. The withheld information is found on pages FOI003, FOI004, FOI006, FOI007 and FOI008.

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 in question contain the name of the appellant, her date of birth, address, telephone number and her account of the incident. The records also contain the name of the third party, his address, telephone number, information pertaining to his involvement in the incident, details of contact the police had with the third party and particulars regarding his arrest and subsequent release.

I concur with this description of the information contained in the records and find that the records at issue contain recorded information about the appellant and the individual accused of committing an alleged sexual assault (the affected person).

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 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 section 14(3)(b) in conjunction with section 38(b). These 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 state that the personal information in the record was compiled and is identifiable as part of an investigation into a possible violation of law, in this case a complaint of sexual assault which is an offence under the *Criminal Code*. The Police state that during this investigation, personal information was collected from both the appellant and the affected person. The Police indicate that, to date, no charges have been laid in this matter and that the incident report has been filed as "inactive".

Based on the representations submitted by the Police and the records themselves, I am satisfied that the personal information in the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law, specifically, section 271(1) of the *Criminal Code* and its disclosure would constitute a presumed unjustified invasion of privacy pursuant to section 14(3)(b) of the *Act*. This section only requires that the investigation be into a "possible" violation of law (Orders M-198, MO-1256, P-233, P-237, P-1225 and PO-1777, for example). Therefore, even though the Police did not bring criminal charges against the affected person the presumption in section 14(3)(b) may still apply.

I find that neither section 14(4) nor section 16 is applicable in the circumstances of this appeal.

As I indicated above, the record contains the personal information of both the appellant and the affected person. Section 38(b) is a discretionary exemption which provides the Police with discretion to balance two competing interests - the appellant's right of access to his personal information and other identifiable individuals' right to privacy. If the Police were to conclude that the balance weighs in favour of disclosure, the records could be released to the appellant, even if the Police have determined that this disclosure would represent an unjustified invasion of the other individual's privacy. An institution's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law (Orders 58, MO-1286-F and MO-1287-I).

After considering the totality of the submissions of the Police, I am satisfied that their exercise of discretion was made in full appreciation of the facts of the case and made upon proper application of the applicable principles of law. Accordingly, I find that the records at issue are exempt under section 38(b) of the *Act*.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ October 17, 2000