



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

ORDER MO-1394

Appeal MA_990341_1

Durham Regional Police Service



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Durham Regional Police Service (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of all documentation relating to an investigation which was conducted as a result of an allegation of a sexual assault involving the appellant and another identifiable individual (the primary affected person).

The Police identified records relating to Incident Number 99-89142 as being responsive to the request and granted partial access to those records containing the appellant's personal information. Access to the remaining records was denied pursuant to section 38(a) (discretion to refuse requester's own information), in conjunction with section 8(2)(a) (law enforcement report) and section 38(b) (invasion of privacy) of the *Act*. Denial under section 38(b) was supported by the consideration favouring the non-disclosure of personal information in section 14(2)(f) (the information is highly sensitive) and the presumptions in sections 14(3)(a) (information relating to medical, psychological or psychiatric history or treatment) and 14(3)(b) (information compiled as part of an investigation into a possible violation of law) of the *Act*.

The appellant appealed the decision of the Police and claimed entitlement to access all of the remaining records, or parts of records.

Initially, I provided the Police with a Notice of Inquiry, seeking their representations on the applicability of the exemptions claimed to the records. The Police provided their submissions, which were shared with the appellant, in part. Due to confidentiality concerns, portions of the representations of the Police were not provided to the appellant. The appellant also made representations in response to the Notice provided to him.

There are 166 pages of responsive records in this appeal. The appellant was given full access to pages 2, 20, 46, 47, 65, 67 and 118. He was given partial access to pages 1-19, 21-24, 48-51, 53-64, 66, 68-78, 119-140 and 145-166, and was denied access to pages 25-45, 52, 79-117 and 141-144, in their entirety.

DISCUSSION:

PERSONAL INFORMATION

Under the *Act*, records which contain "personal information", as defined in section 2(1), may be exempt from disclosure. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including information relating to the medical, psychiatric, psychological, criminal or employment history of the individual [paragraph (b)], the address and telephone number of the individual [paragraph (d)] and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual [paragraph (h)].

Based on my review of each of the records or parts of records remaining at issue, I make the following findings:

- Records 1, 3-14, 15-16, 24, 25, 26-32, 33-35, 39-42, 43-45, 51, 55, 56-57, 61, 62-63, 71, 72, 73, 75, 76-78, 79-83, 98-117, 119-140, 141-144, 145, 146-148 and 149-166 contain the personal information of the appellant and other identifiable individuals, including the primary affected person;
- Records 23, 37, 38, 50, 52, 54, 60, 70, 84-87 and 88-97 contain only the personal information of identifiable individuals other than the appellant;
- Records 17-19, 21-22, 36, 48-49, 53, 58-59, 64, 66 and 74 do not contain any personal information as that term is defined in section 2(1) of the *Act*. While the names of certain persons appear on these records, they do so only in their professional capacity as social work assessor, psychiatrist or doctor and not in their personal or private capacities. This information does not, accordingly, qualify as the personal information of these individuals.

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 an 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 discretion to deny the requester access to that information.

Where, however, a requester seeks access to records which contain the personal information of other individuals, but not himself or herself, section 14(1) of the *Act* prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if "the disclosure does not constitute an unjustified invasion of personal privacy."

In both situations, 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, and section 14(3) lists the types of information the disclosure of which is presumed to 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).

In this case, the Police have cited the presumptions in sections 14(3)(a) and (b) which read:

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.

and the consideration favouring non-disclosure in section 14(2)(f) which states:

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,

- (f) the personal information is highly sensitive;

Specifically, the Police submit that the disclosure of the information contained in Records 3 to 14 and 79 to 117 would constitute a presumed unjustified invasion of the personal privacy of the primary affected person as these records contain information relating to his/her medical and psychological situation.

The Police also indicate that all of the remaining records or parts of records at issue were compiled and are identifiable as part of its law enforcement investigation into allegations of sexual assault made by the primary affected person against the appellant. The Police state that this investigation was conducted in order to determine whether a possible violation of the *Criminal Code* had occurred.

The appellant argues that the personal information contained in the records is unlikely to be accurate or reliable, a consideration favouring privacy protection, which is found in section 14(2). He also submits that because the allegations were unfounded and no criminal proceedings were brought by the Police, he ought to be granted access to the information. Finally, he suggests that as the victim of false accusations against him, he ought to be entitled to examine the allegations as the matters raised therein relate directly to himself.

Based on my review of Records 3 to 14 and 79 to 117, I find that their disclosure is presumed to constitute an unjustified invasion of personal privacy as they relate directly to the primary affected person's medical and psychological history, diagnosis, evaluation and treatment. I have reviewed the remaining records or parts of records and find that, with the exception of Records 17-19, 21-22, 36, 48-49, 53, 58-59, 64, 66, 68, 69 and 74 which I have found above do not contain any personal information, all were compiled as part of a law enforcement investigation into the allegations of sexual assault brought forward by the primary affected person. As such, these records fall within the ambit of the presumption in section 14(3)(b) and their disclosure is presumed to constitute an unjustified invasion of the personal privacy of the primary affected person.

I agree that the considerations referred to by the appellant are valid and, taken on their own, would assist him in obtaining access if the exercise involved a balancing of competing considerations under section 14(2) alone. However, as I have found that the presumptions in sections 14(3)(a) and (b) apply to the personal information contained in the majority of the records, no combination of factors under section 14(2), listed or otherwise, can operate to override the presumptions. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]

Accordingly, I find that Records 1, 3-14, 15-16, 24, 25, 26-32, 33-35, 39-42, 43-45, 51, 55, 56-57, 61, 62-63, 71, 72, 73, 75, 76-78, 79-83, 98-117, 119-140, 141-144, 145, 146-148 and 149-166, which contain the personal information of both the appellant and other identifiable individuals, are exempt from disclosure under section 38(b). In addition, Records 23, 37, 38, 50, 52, 54, 60, 70, 84-87 and 88-97, which contain only the personal information of identifiable individuals other than the appellant, are exempt from disclosure under section 14(1).

I will now address the application of section 8(2)(a) to the remaining documents, Records 17-19, 21-22, 36, 48-49, 53, 58-59, 64, 66, 68, 69 and 74, which I have found do not contain any personal information within the meaning of section 2(1).

LAW ENFORCEMENT REPORT

In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the Police must satisfy each part of the following three part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[See Order 200 and Order P_324]

The word "report" is not defined in the *Act*. However, previous orders have found that in order to qualify as a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact [Order 200].

Records 17-19, 21-22, 36, 48-49, 53, 58-59, 64, 66, 68, 69 and 74 are various documents relating to search warrants obtained by the Police in the course of their investigation into the allegations made against the appellant. They do not consist of a formal statement or account of the results of the collation or consideration of information. Rather, they simply relate to the process of

obtaining search warrants by the Police. As such, I find that they are not exempt from disclosure under section 8(2)(a) and ought to be disclosed to the appellant.

ORDER:

1. I order the Police to disclose Records 17-19, 21-22, 36, 48-49, 53, 58-59, 64, 66, 68, 69 and 74 to the appellant by providing him with a copy by March 14, 2001 but not before March 9, 2001.
2. I uphold the decision of the Police to deny access to the remaining records, or parts of records.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original Signed By: _____ February 8, 2001
Donald Hale
Adjudicator