



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1362

Appeal MA_000085_1

Sarnia Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request to the Sarnia Police Service (the Police) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all investigation reports, notes and statements with respect to an incident which occurred on a specified date. The Police relied on the discretionary exemption for law enforcement records, pursuant to sections 8 and 38(a) of the *Act*, in denying the appellant access to records responsive to his request.

During the mediation stage of this appeal, the Police issued three subsequent decisions. In each decision, the Police released one or more of the records originally sought, as well as additional records which the appellant requested during the course of mediation. The Police continued to deny access to a number of records, and, in the second decision, cited section 14(3)(b), which creates a presumption against disclosing an individual's personal information to another person where that information forms part of a criminal investigation. Also in the course of mediation, the Mediator added the possible application of section 38(b) as an issue in this appeal. Section 38(b) provides that an institution may refuse to disclose personal information of a requester if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

During mediation, the appellant continued to take the position that the Police could and should provide him with further records, or more complete records, responsive to his request.

I sent a Notice of Inquiry setting out the issues in this appeal to the Police initially. The representations received from the Police were sent to the appellant, together with the Notice of Inquiry. The appellant submitted representations in response. I have considered all the representations of the parties.

RECORD:

The records at issue in this appeal consist of:

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- Crown Brief Synopsis
- Crown Brief Records and Documents
- Supplementary Report of Officer #1
- Arrest Report
- Supplementary Reports and "Will State" Statements of Officers #2, #3, #1 and #4
- Motor Vehicle Collision Report
- Supplementary Report of Officer #5
- 2nd Supplementary Report and "Will State" of Officer #4
- 2nd Supplementary Report of Officer #5
- Duty Book Handwritten Notes of Officers #1 (10 pages), #3 (4 pages) and #6 (2 pages)
- Lockup Attendance Record
- 911 Call Records (Incident Details/History).

ISSUES IN DISPUTE:

REASONABLE SEARCH

Was the search by the Police for records responsive to this request reasonable?

Where, as in this case, an appellant takes the position that further responsive records exist, the issue to be decided is whether the Police have conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Police will be upheld. If I am not satisfied, further searches may be ordered.

The Police issued a series of four decisions with respect to the appellant's request for records. In each decision, the Police provided the appellant with further information regarding the search for responsive records, and released further materials. The appellant has appealed each decision but has filed only one letter of appeal in respect of the first decision. Based on the representations filed by the appellant in response to my Notice of Inquiry, I understand that he is challenging the completeness of the record in four areas:

- the absence of any record in respect of a possible second 911 call;
- the absence of any notes from Officer #7;
- the completeness of the booking sheet (Lockup Admittance Record);
- the absence of a property inventory record.

I have reviewed the explanations provided by the Police in respect of the missing and/or allegedly incomplete records, both in their decision letters and in an affidavit filed with their representations.

I am satisfied that the searches undertaken for records responsive to this request were reasonable.

In respect of the 911 call records, I note that the appellant relies on the transcript of a hearing before the Ontario Court of Justice on March 23, 2000, in which evidence is given that a second 911 call was made during the relevant incident. The person testifying states that he made one call from a parking lot and a second call while driving to the police station.

The affidavit filed by the Police, on the other hand, states that, on May 15, 2000, a search was made of the Ontario Municipal and Provincial Police Automation Cooperative data base and only one 911 record was located. The deponent states that this is the only location where such a record could exist and that 911 tapes are erased and reused on a regular 30 day cycle.

I have examined the 911 call record which has been disclosed to the appellant, with the personal information of other persons severed. I note that the record reports, first, that there has been a rear end collision in a parking lot and that a vehicle "may attempt to follow" the caller, and, secondly, that the caller is "now driving to station". It appears that the single record may cover both the first and second call.

With respect to the allegedly missing notes of one of the Police Officers, I accept the affidavit evidence to the effect that his only notes are on the previously-disclosed booking sheet. The

appellant has not provided any evidence to support his contention that other notes could be provided. On the issue of the possible existence of a property inventory record, I accept the deponent's evidence that no property inventory record was located in a search of all 1999 records held by the Manager of Information Services.

Finally, I have reviewed the booking sheet and I am satisfied that a complete copy was provided to the appellant.

The appeal on this issue is dismissed

PERSONAL INFORMATION:

Do the records contain "personal information" as defined in section 2(1) of the Act and, if so, to whom does it relate?

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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.

I have examined the records at issue in this appeal. All of the records contain the personal information of the appellant, together with personal information of other individuals, particularly the complainant who made the 911 calls to the Police. As a result, the appellant's request for access must be considered under section 38(b), which establishes a discretionary exemption where the release of records to a requester would constitute an unjustified invasion of the personal privacy of another individual.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION / UNJUSTIFIED INVASION OF OTHER INDIVIDUALS' PRIVACY:

Are the records exempt from disclosure under section 38(b) in conjunction with section 14(1) of the Act ?

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 requester and other individuals, and the institution determines that the disclosure of the information would constitute an unjustified invasion of the personal privacy of those other individuals, the institution has 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 Court decided 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) which creates a presumption against disclosing an individual's personal information to another person where that information forms part of a criminal investigation.

Section 14(3)(b) reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

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.

All of the records at issue in this appeal were compiled as part of an investigation into a possible violation of the law. The appellant was arrested during the incident which is the subject of the records and was later charged with several offences related to the operation of a motor vehicle. Those charges are still pending before the Ontario Court of Justice.

I am satisfied that the records at issue fall within section 14(3)(b). On this basis, the Police have discretion, under section 38(b), to refuse to disclose the records to the appellant. Section 38(b) requires that the Police consider and balance two competing interests: the appellant's right of access to his personal information and the privacy rights of the other individuals whose personal information is contained in the records.

The Police address, in their representations, the factors that they have considered in the exercise of their discretion under section 38(b). The Police state, among other things, that they have exercised section 38(b) discretion "by providing the appellant with his own information while severing the personal information of other individuals". However, a review of the records indicates that the only severances made by the Police were with respect to the 911 call records. The severed 911 call records have been disclosed to the appellant and those severances do not appear to be challenged by the appellant.

In the case of all other records still at issue in this appeal, the Police do not appear to have considered the application of section 4(2) of the *Act*. Under section 4(2), an institution is

required to release as much of the record as can reasonably be severed without disclosing information considered to be exempt.

Having reviewed the records, I am satisfied that portions of some of the documents could be released to the appellant without affecting the personal privacy of other persons. The records in this category are the following:

- Crown Brief Synopsis
- Crown Brief Records and Documents
- Supplementary Report of Officer #1
- Supplementary Reports and "Will State" Statements of Officers #2, #3, #1 and #4
- Duty Book Handwritten Notes of Officers #1 and #6

With this Order, I am providing the Police with a copy of these records on which I have highlighted those portions which contain the personal information of the appellant and which must be disclosed to him. Also highlighted is incidental information in the records which is not the personal information of any other individual, or otherwise exempt, including information identifying the police officers in their professional capacity. The remaining, non-highlighted portions of the records listed above consist of the personal information of persons other than the appellant and as such are exempt from disclosure under section 14(1) and (3)(b).

Turning to the remaining records at issue, I uphold the decision of the Police to exercise their discretion under section 38(b), in conjunction with section 14(3)(b), to deny access on the basis that disclosure would constitute an unjustified invasion of the personal privacy of other individuals. The records were compiled as part of a criminal investigation and contain considerable personal information of persons other than the appellant, which information is not readily severable from the personal information of the appellant. I am satisfied that the exercise of discretion in respect of these records is appropriate in the circumstances.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION / LAW ENFORCEMENT:

If the records do contain personal information relating to the appellant, is the record exempt under section 38(a) in conjunction with section 8 of the Act?

As noted above, the Police, in their decision letters, relied on the discretionary exemptions for records relating to law enforcement in section 8(1)(a),(b),(f) and (2)(a).

However, the representations filed by the Police do not include any submissions with respect to the possible application of section 8(1)(a),(b),(f) or (2)(a), as cited in their decision letters. Further, the representations do not address the exercise of discretion under section 38(a) to withhold law enforcement records. Although the representations do cite section 8(1)(d)(confidential source), it is to support the submission that the Police have appropriately exercised their discretion under section 38(b) in making severance to the call records.

Accordingly, there is no basis upon which I could uphold the decision of the Police to withhold the records under section 38(a) and section 8.

ORDER:

1. I find that the Police conducted a reasonable search for records responsive to the request. The appeal on this issue is dismissed.
2. I order the Police to disclose the highlighted portions only of the following records by **December 5, 2000**.

- Crown Brief Synopsis
- Crown Brief Records and Documents
- Supplementary Report of Officer #1
- Supplementary Reports and “Will State” Statements of Officers #2, #3, #1 and #4
Duty Book Handwritten Notes of Officers #1 and #6.

I find that the non-highlighted portions of the documents listed above satisfy the requirements of section 14(3)(b) and are exempt under section 14(1) of the *Act*.

4. I uphold the decision of the Police to deny access to the remaining records.

Original signed by: _____
Kathy Laird
Adjudicator

_____ November 14, 2000