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

ORDER MO-1388

Appeal MA-000144-1

Ottawa-Carleton Regional Police Services Board

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NATURE OF THE APPEAL:

The appellant submitted a request to the Ottawa-Carleton Regional Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to copies of all information pertaining to two specifically identified incidents as well as to any other information in the custody of the Police about the appellant.

The Police located responsive records and granted partial access to them. The Police withheld access to the remaining records and parts of records pursuant to the following sections of the *Act*:

- facilitate commission of unlawful act - section 8(1)(l);
- law enforcement report - section 8(2)(a);
- discretion to refuse requester's own information - section 38(a); and
- invasion of privacy - section 38(b) in conjunction with sections 14(3)(a) (information relates to medical history, treatment or condition) and 14(3)(b) (information compiled as part of a law enforcement investigation).

The appellant appealed the decision of the Police.

During mediation, the appellant agreed not to pursue access to a police code which was found on page 23 of the records. As section 8(1)(l) was claimed only for this severance, it is no longer at issue in this appeal. Further, the Police reconsidered their decision and issued revised decisions in which they withdrew the application of sections 8(2)(a) and 38(a) and granted access in full to pages 8, 9 and 13 and further access in part to page 20. Accordingly, these exemptions and pages or parts of pages are no longer at issue.

Also during mediation, the appellant indicated that more records should exist in the Police files concerning her. She gave examples of additional records that should be in the custody of the Police such as correspondence and electronic messages that had been sent to a named police officer from her and from a named college, as well as a copy of a trespass notice. The Police were unable to confirm with the named police officer whether these records existed in his files. Therefore, the reasonableness of search conducted by the Police for responsive records is also an issue in this appeal.

I sent a Notice of Inquiry to the Police, initially. The Police submitted representations indicating that additional records had been located. They attached these records to their representations along with a decision letter dated August 31, 2000 which they indicated would be sent to the appellant.

I subsequently advised the parties that these records and the new decision would not form part of the current appeal. Despite the location of additional records, however, the reasonableness of search remains an issue in this appeal.

I then sent a Notice of Inquiry to the appellant along with the complete representations of the Police. The appellant submitted representations in response and indicated further that she wished me to also refer to her previous correspondence with this office. In her representations, the appellant made the following statements:

> I am not asking for the disclosure of the third party's home address, telephone numbers, college identifier number, date of birth, physical descriptors, educational history, and religious background.
>
> ...
>
> I did ask in my previous correspondence for the disclosure of the identity of the person who accused me of assaulting her. Now I do not need to have the name of this person revealed. **However, I do maintain my request of the disclosure of the content of what was said because it relates to me directly.** [emphasis in the original]

The only information that has been withheld from pages 2, 4, 12, 17, 20 and the top of page 15 consists of the type of information that the appellant indicates she is no longer seeking. In addition, page 14 is an authorization for release of medical information. The complete document has been withheld as it pertains to an identifiable individual named therein. The personal identifiers are no longer at issue in accordance with the appellant's description of the information she is not seeking. Taken together, the two statements made by the appellant clearly indicate that the appellant is now seeking only the content of the statements that were made about her. Page 14 does not contain this type of information. Therefore, it is no longer at issue in this appeal.

RECORDS:

As a result of the narrowing of the records at issue by the appellant in her representations, the records at issue consist of:

- Record 1 - two pages of an incident report (pages 10 and 11);
- Record 2 - two pages of an incident report prepared by the named college (the bottom of page 15 and page 16); and
- Record 3 - three pages of an officer's notebook (pages 21, 22 and 23).

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient detail about the records which she is seeking and the Police indicate that further records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The *Act* does not require the Police to

prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the Police must provide me with sufficient evidence to show that they have made a **reasonable** effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the Police's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

During mediation, the appellant indicated that she sent correspondence and electronic messages to a named police officer. She stated further that a named individual from the college also sent correspondence to the police officer and provided him with a copy of a trespass notice. During mediation, the Police indicated that they were not able to confirm with the police officer whether he had any records other than those originally located.

In responding to this issue generally, the Police indicate that the files relating to the case numbers provided by the appellant were located. The Police note that the two files had been cross-referenced and were filed under one number. The Police state further that the attending officers were requested to provide their notes. The Police indicate that only one officer made notes in his duty book and these notes were included as part of the responsive records. The Police state that the investigating officer (the named police officer) was originally not available, but that he subsequently confirmed that he did not have any notes in his duty book. This individual also confirmed that he did not have any e-mails from the appellant, nor could he recollect her sending him any. As I indicated above, the Police now state that further records were located and a decision would be issued with respect to them. The Police do not indicate in their representations where these records were located and the representations only refer to the location of e-mails.

The appellant states:

> About whether a *reasonable search* has been made in relation to other documents, the fact that a search was necessary demonstrates that personal records may not be maintained according to the requirements to the *Act* ...
>
> The fact that the Police has admitted the existence of e-mails and correspondence that relates to me is sufficient to conclude that the search was *reasonable* **if** the Police will provide me with the assurance that no more document exists in connection to that search.

In the August 31, 2000 decision, the Police indicate that additional information was located on the investigative file from the named police officer concerning correspondence between the appellant, the named police officer and employees of the college. The additional records that the Police located and attached to

their representations consist of e-mails, reports, correspondence and other documents originating from the college and a trespass notice.

The representations submitted by the Police on this issue are somewhat confusing as it is not clear where the additional records were located. However, the fact remains that they were located and they clearly contain the types of information that the appellant believed existed within the custody of the Police. Further, the August 31 decision indicates that they were located in a file connected to the named police officer. In my view, the additional records respond directly to the appellant's expectations with respect to the records that should have been located. In the circumstances, I am satisfied that in contacting the two named officers and requesting information from their notebooks and e-mails and reviewing the file pertaining to the incident numbers, the Police have taken reasonable steps in searching for responsive records. Accordingly, the search conducted by the Police was reasonable and this part of the appeal is dismissed.

PERSONAL INFORMATION

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

The Police submit that the records contain the personal information of the parties involved in the matters to which the records relate, including their names, addresses, telephone numbers and statements made by them.

The appellant makes the following submissions regarding this issue:

> The information I am requesting is about *me* as per the definition stated in section 2(1) of the *Act*. Anything said or written about me includes *the opinions or views of the individual* (I) made by a third party.
>
> I am not asking for the disclosure of the third party's home address, telephone numbers, college identifier number, date of birth, physical descriptors, educational history, and religious background.
>
> I did ask in my previous correspondence for the disclosure of the identity of the person who accused me of assaulting her. Now I do not need to have the name of this person revealed. **However, I do maintain my request of the disclosure of the <u>content</u> of what was said because it relates to me directly.** [emphasis in the original]

The records relate to incidents involving the appellant and another individual. I agree with the Police that the records contain the personal information of the parties involved, namely, the appellant and another identifiable individual.

The appellant indicates that she is not seeking any personal identifiers or other identifying information relating to the other individual. Rather, she is seeking only the content of any statements made by this other individual. The appellant submits that this information pertains only to her pursuant to a combined reading of sections 2(1)(e) and (g) of the *Act* which state:

> "personal information" means recorded information about an identifiable individual, including,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (g) the views or opinions of another individual about the individual.

I do not accept the appellant's view of the personal information in the records. The information at issue in the records does not consist simply of the personal views or opinions of the other individual about the appellant. The statements made by the other individual describe the events that transpired between the two of them. In this regard, the information this person provided is as much about her as it is about the appellant. Accordingly, I find that the information at issue in the records qualifies as the personal information of both individuals.

The appellant indicates that she no longer requires the name of this individual. There have been occasions in previous orders that a finding has been made that once a name is removed, the information can no longer be characterized as "personal information" (Order M-264, for example). This would be the case, for example, where the parties are complete strangers and there is nothing in the remaining portions of the record that could reasonably allow the reader to infer the person's identity.

However, in Order P-230, former Commissioner Tom Wright stated:

> I believe that provisions of the *Act* relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

I agree with Commissioner Wright's view.

In the current appeal, it is not clear why the appellant is no longer seeking the identity of the other individual. That is, it is not clear whether the appellant simply no longer wants to know this information, or whether it is because she already knows the information. Apart from this uncertainty, however, given the nature of the incidents and the location at which they occurred, I am not prepared to find that simply removing the name of the other individual would render the
remaining information no longer personal in nature. The records themselves indicate that the two parties have been involved in more than one incident. Even though the appellant may not know the name of this person, as an individual, she is identifiable to her. In my view, knowledge of an individual's name is only one of many indicators that the information constitutes personal information. Indeed, section 2(1)(h) states that an individual's name is only personal information 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.

In the circumstances of this appeal, I find that the information now remaining at issue qualifies as the personal information of both the appellant and another identifiable individual. Moreover, the information pertaining to the appellant in these portions of the records is intertwined with that of the other individual in such a way that it is not severable.

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 sections 14(3)(a) and (b) 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;

Section 14(3)(b)

The Police state that the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law, in particular, an investigation to determine whether an offence under the *Criminal Code* may have been committed. In this regard, the Police state that they were called to investigate an alleged assault. The Police indicate that as part of that investigation they identified, contacted and interviewed the alleged victim in order to determine whether charges of assault should be laid.

With respect to their exercise of discretion under section 38(b), the Police indicate that the circumstances of the incident were considered in determining whether the appellant's right to access outweighed the privacy rights of the other individual involved in them. The Police indicate that individuals involved in police investigations have an expectation that the information they provide about themselves in furtherance of the investigation would be treated confidentially. They note further that disclosure of a record under the *Act* is effectively disclosure to the world. The Police acknowledge that the circumstances between the parties "have been difficult and stressful for all individuals involved". However, the Police state that after consideration of the contents of the records at issue and the circumstances, they concluded that the privacy rights of the other individual involved outweigh the appellant's right of access.

The appellant states in response to the position taken by the Police that:

> The Police argue that its *exercise of discretion* to deny me full disclosure is justifiable. Because of this action, I cannot find out what was said about me and I cannot request correction in order to complete the program I was enrolled in... I have already lost more than a year now since the eviction from the College. I have now fewer chances and less opportunities in the job market than the person or persons who has made damaging comments about me. As I have explained previously, the Police is hiding information that I am entitled to obtain in order to be informed and to determine my rights and to return to [the] College and complete my studies. I cannot determine if the hidden information is accurate or not and I cannot make a request for correction. My reputation and my professional life have been damaged. Clearly, my rights of access should be considered as a priority.

Based on the submissions of the parties and my review of the information at issue in the records, I find that the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law, that is, an alleged assault contrary to the *Criminal Code*. Accordingly, disclosure of the personal information would constitute a presumed unjustified invasion of personal privacy pursuant to section 14(3)(b) of the *Act*. In considering the submissions of the Police regarding their exercise of discretion in denying access to this information, I find that they have taken proper factors into consideration, in particular, the contentious nature of the incidents and the expectations of the other individual that her discussions with the Police regarding these incidents would be held in confidence. As a result, I find that the information at issue in the records is exempt under section 38(b) of the *Act*.

ORDER:

1. The portion of the appeal relating to the reasonableness of search is dismissed.

2. I uphold the decision of the Police to withhold the records at issue.

Original Signed By: January 19, 2001
Laurel Cropley
Adjudicator