



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

ORDER MO-1389

Appeal MA-000213-1

Ottawa-Carleton Regional Police



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 Ottawa-Carleton Regional Police (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the contents of a specific file. The appellant specified that he is seeking access to all records pertaining to the file, including any correspondence or other material which originated with or was received by a number of named individuals. The requested records relate to an alleged child abuse incident involving the appellant's daughter, which was investigated by the Police at the appellant's request.

The Police located a number of responsive records and granted partial access to them. Access to the remainder of the records was denied pursuant to section 14(1) (invasion of privacy), with reference to the presumption in section 14(3)(b) (investigation into possible violation of law) of the *Act*. The Police also withheld certain portions of the records on the basis that they are not responsive to the request.

The appellant appealed the decision of the Police.

During the mediation of the appeal, the Police issued a supplementary decision to the appellant and disclosed a number of additional records, either in total or in part. The Police also claimed the application of the invasion of privacy exemption found in section 38(b) of the *Act* to the records which remained at issue.

Also at mediation, the appellant confirmed that he does not have lawful custody of his daughter. As a result, section 54(c) (right of access by person who has lawful custody of individual less than 16 years of age) is not applicable in the circumstances of this appeal. The appellant also narrowed the scope of the records at issue in this appeal to include only the information which was withheld on pages 4, 5, 6, 7, 13 and 14 of the records. He further indicated that he accepts that the information identified by the Police at the bottom of page 13 is not responsive to his request.

A Notice of Inquiry setting out the facts and issues in this appeal was sent 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.

RECORDS:

The records remaining at issue consist of the withheld portions of a handwritten statement of a police officer, contained on a form entitled "R. Statement" (pages 4, 5, 6, 7) and police officer's notes (pages 13 and 14). As indicated above, the information which was severed from page 13 on the basis that it is not responsive to the request is not at issue in this appeal.

DISCUSSION:

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 records at issue contain information about the appellant's daughter, including the statements that she provided to the police, as well as a description of her injuries. The records also contain information about other identifiable individuals, including some references to the appellant in each of the records at issue. I find that all of the information at issue is about these individuals and thus qualifies as their personal information as defined in section 2(1) of the *Act*.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/UNJUSTIFIED INVASION OF OTHER INDIVIDUALS' 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 the presumption in 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 submit:

The personal information collected from the parties was compiled by members of [the Police] during an investigation into allegations that an offence under the Criminal Code of Canada may have been committed. The allegation in this case was an assault on a minor. The information collected and maintained in these records was used to investigate an offence and prosecute the offenders should criminal charges be warranted.

...

There is slight reference to the appellant in the statement of one of the parties, however, the majority of the information contained in the records is the personal information of parties other than the appellant. Therefore the information qualifies for exemption under section 14(1)(f), 14(3)(b) and 38(b).

Although the appellant has an interest in the information, the other parties have a right to the protection of their privacy.

After careful consideration of the above we exercised our discretion to deny access to the appellant.

...

The circumstances of the incident were looked at to see if the rights of the appellant outweighed the privacy rights of the other parties involved. Disclosure of a record is in effect disclosure to the world and not just the requester. We therefore feel that the privacy rights of the third parties involved outweighs the requester's right to access.

The appellant's representations provide background information relating to the investigation which was undertaken by the Police, and detail his dissatisfaction with the way the Police have handled this matter. The appellant submits that he requires the requested records in order to be able to scrutinize the actions of a particular police officer and the Police generally, thereby implicitly raising the application of section 14(2)(a) of the *Act* (disclosure is desirable for purpose of public scrutiny). However, for the most part, the appellant's representations do not directly address the specific issues to be determined in this appeal.

Based on the material before me, I am satisfied that the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the *Criminal Code*. Therefore, the section 14(3)(b) presumption of an unjustified invasion of personal privacy applies to the information that was withheld by the Police. I also find that neither section 14(4) nor section 16 is applicable in the circumstances of this appeal.

It is also clear to me that the Police carefully considered the records and provided the appellant with as much information pertaining to him, as well as the investigation in question, as could reasonably be disclosed without unjustifiably invading the privacy of other individuals. I am also satisfied that the Police properly exercised discretion under section 38(b), by taking into account all of the relevant circumstances of this appeal.

As noted above, the appellant has implied that the factor favouring disclosure at section 14(2)(a) applies. That section reads:

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,

the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

As indicated above, once a presumption under section 14(3) is established, that presumption cannot be overcome by one or any combination of factors under section 14(2). As a result, even if I were to find that section 14(2)(a) factor favouring disclosure was relevant, the Police nevertheless may exercise their discretion under section 38(b) to withhold the information in question on the basis of an unjustified invasion of privacy.

Accordingly, I find that the information that remains at issue in this appeal is exempt from disclosure pursuant to section 38(b) of the *Act*.

ORDER

I uphold the decision of the Police.

Original Signed By: _____ January 22, 2001
Irena Pacoe
Adjudicator