



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

# **ORDER MO-1390**

**Appeal MA-000186-1**

**Niagara Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

This is an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a decision of the Niagara Regional Police Services Board (the Police). The appellant submitted a request to the Police for “a copy of all documents, notes, witness statements, lists of potential witnesses, lists of potential physical evidence and/or copies of any physical evidence that came into the possession of the Niagara Regional Police” with respect to a particular investigation.

The Police denied access to all the records pursuant to sections 8(1)(a), 8(1)(b), 8(2)(a) [law enforcement], and 14 [invasion of privacy] of the *Act*.

The appellant appealed the decision of the Police.

During mediation, the Police agreed to withdraw from the scope of the appeal the exemption claimed under section 8(2)(a).

This Office provided the Police with a Notice of Inquiry summarizing the facts and issues in the appeal. In the course of responding to the Notice of Inquiry, the Police modified their earlier decision and granted partial access to the records. The Police also submitted that they were entitled to rely on the exemptions in sections 38(a)[discretion to refuse requester’s own information], and 38(b)[invasion of privacy].

The Police subsequently located an additional record and a videotape, granting partial access to these records and relying on the same exemptions claimed above for the portions of these records which they refused to disclose.

The Police submitted representations to this Office, the non-confidential portions of which were sent to the appellant together with an amended Notice of Inquiry. The appellant did not submit representations.

## **RECORDS:**

Three groups of records and a videotape are at issue. The first group consists of 17 pages and includes an investigation report, a supplementary report, a property report, and an arrest report (Group 1: pages 1 to 17). The second group is the appellant's sealed criminal file consisting of 43 pages and includes instructions to crown counsel, a CPIC print-out, fingerprints, bail records, and duplicates of many of the documents in the first group of records (Group 2: pages 18 to 58). The third group is the investigating officer’s file consisting of 92 pages and includes seven witness statements, information on the victim, the victim’s family, and victims of similar crimes, photographs of possible suspects, correspondence from named individuals, a newspaper article, and an investigation report (Group 3: pages 59 to 150). The videotape was taken at a financial institution.

The following chart summarizes the Polices decisions regarding the records:

RECORDS	FULL ACCESS GRANTED	PARTIAL ACCESS GRANTED	ACCESS DENIED
Group 1 (pages 1-17)	11, 17	1, 2, 5, 7-10, 12-14, 16	3-4, 6, 15
Group 2 (pages 18-58)	18-23, 25-28, 31-35, 42-44, 46-49, 51-55, 58	24, 29-30, 36-37, 45, 50, 56-57	38-41
Group 3 (pages 59-150)	134-140, 142, 144-146, 148, 149	141, 143, 147, 150	59-133
Videotape			YES

The following pages have been disclosed to the appellant and are therefore no longer at issue in this appeal: 11, 17-23, 25-28, 31-35, 42-44, 46-49, 51-55, 58, 134-140, 142, 144-146, 148, 149.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine which parts of the *Act* apply, it is necessary to decide whether the records contain personal information, and if so, to whom that personal information relates.

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.

In this case, the police investigation relates to the offences of fraud and theft under the *Criminal Code*. Since the Police initially charged the appellant in this matter, but later withdrew the charges, the records contain the personal information of both the appellant and individuals other than the appellant. I have reviewed the records that the Police have denied access to and find that:

- i) pages 30, 36, 37, 40, 56, 57, 115, contain the personal information of the appellant
- ii) pages 1-7, 15, 38, 41, 59-114, 118-124, 141, 143, 150 contain only the personal information of individuals other than the appellant

iii) pages 8-10, 12-14, 16, 24, 29, 39, 45, 50, 116, 117, 125-133, 147 contain the personal information of both the appellant and individuals other than the appellant

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT**

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(a) of the *Act*, an institution has discretion to deny access to an individual's own personal information in instances where certain exemptions, including section 8, would apply.

Sections 8(1)(a) and (b) provide that:

A head may refuse to disclose a record if the disclosure could reasonably be expected to

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

The purpose of the sections 8(1)(a) and (b) exemption is to provide the Police with discretion to deny access to records in circumstances where disclosure could reasonably be expected to interfere with an *ongoing* law enforcement matter or investigation. The Police bear the onus of providing evidence to substantiate that, first, a law enforcement matter is ongoing and second that disclosure of the records could reasonably be expected to interfere with the matter [See Orders P-324, P-403 and M-1067].

Previous orders of this Office have found that in order to establish that disclosure "could reasonably be expected to" result in a particular harm, the party with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373 and *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 and 40 (Div. Ct.)].

#### Law Enforcement

With respect to the first issue of whether the records relate to a law enforcement matter, the records must satisfy the definition of the term "law enforcement" found in section 2(1) of the *Act*. This section defines "law enforcement" to mean (a) policing, (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and (c) the conduct of proceedings referred to in clause (b).

The records and videotape at issue were gathered in connection with a police investigation of possible breaches of the *Criminal Code*. This matter clearly falls within the definition of “law enforcement” as the term is defined in section 2(1) of the *Act*. Based on information provided by the Police, I am satisfied that they have established that the investigation remains ongoing.

### Investigation

With respect to the second issue of whether disclosure could reasonably be expected to interfere with an ongoing law enforcement matter or investigation, the Police submit the following:

The disclosure of the modus operandi of the responsible party could “reasonably be expected to interfere with this investigation”. To keep the actions of a suspect confidential is a powerful investigative tool. By utilizing this investigative tool, facts of an investigation are only known by the investigator and the suspect themselves. During the interview of the suspect, the suspect may reveal knowledge of the crime that would only be known by the involved party. Thus, implicating them in the crime.

I find that the Police have provided detailed and convincing evidence sufficient to establish that disclosure of part or all of the following records could reasonably be expected to interfere with the ongoing investigation. Consequently, each of the records, or parts of records set out in the chart below qualify for exemption under section 8(1)(b) of the *Act*. To the extent that some of these records contain the personal information of the appellant, I am also satisfied that the Police have exercised their discretion under section 38(a) appropriately, in denying access to this information.

RECORDS	PARTIAL ACCESS GRANTED	ACCESS DENIED
Group 1 (pages 1-17)	1, 2, 5, 7-10, 12-14, 16	3, 4, 6, 15
Group 2 (pages 18-58)	24, 29, 30, 36-40, 45, 50, 56, 57	41
Group 3 (pages 59-150)	115, 141, 143, 147	59-114, 118-124
Videotape		YES

However, I find that disclosure of the severed portions on pages 8, 147, and 150 could not reasonably be expected to interfere with the investigation. The F.P.S. Number (Fingerprint Synopsis Number) on pages 8 and 147 only relates to the appellant and is no longer relevant to the police investigation. Since this information does not qualify for exemption under section 8(1)(a) or (b), section 38(a) has no application and the information must accordingly be disclosed. The number of the court file on page 150 has no bearing on the investigation. Therefore this information does not qualify for exemption under section 8(1)(a) or (b). As no personal information of other individuals is contained on this page, the exemption under section 14 does

not apply. Since no other exemptions appear to apply, the court file number must accordingly be disclosed.

I have highlighted those portions of pages 8, 147, 150 which the Police must disclose to the appellant.

#### CPIC

Pages 38, 39, 40 and 115 are printouts from the Canadian Police Information Centre (CPIC). The CPIC computer system is a central repository into which police agencies within Canada enter information which is accessible to other police agencies. Generally, members of the public are not authorized to access the CPIC system. Certain information on the CPIC system, such as transmission access codes and data base information, has been held to be exempt from disclosure [Order MO-1335, MO-1293]. However, CPIC policy provides for disclosure of certain information where a requester is seeking access to his/her own personal information.

I order that those parts of pages 38, 39, 40, 115 that contain only the personal information of the appellant will be disclosed. Again, I find that disclosure of this information could not reasonably be expected to interfere with the investigation. As this information does not qualify for exemption under section 8(1)(a) or (b), section 38(a) also has no application. I have highlighted those portions of pages 38, 39, 40, 115 which the Police must disclose to the appellant.

#### **Absurd result**

In Order M-444, former Adjudicator John Higgins found that there was no compelling reason for non-disclosure of information which the appellant in that case had provided to the Police. This approach has been applied in a number of subsequent orders and has been extended to include not only information provided by appellants, but also information obtained in the presence of appellants or of which appellants were clearly aware [Orders M-451, M-613, MO-1196, P-1414, P-1457 and PO-1679, among others].

In this case, pages 116 and 117 are letters addressed to the appellant, page 125 is a letter written on the appellant's behalf by his lawyer, and pages 126-133 relate to a statement of claim issued on the appellant's behalf by his lawyer. I find that denying the appellant access to these records, which he either already possesses or of which he is aware, would lead to an absurd result. Accordingly, I find that sections 8(1)(a) and 8(1)(b) have no application to pages 116, 117, 125-133 as their disclosure would not interfere with a law enforcement matter or an ongoing law enforcement investigation.

Because of the manner in which I have addressed the application of section 8(1)(b) and 38(a) to the records, it is not necessary for me to consider whether they are exempt from disclosure under sections 14(1) or 38(b).

#### **ORDER:**

1. I order the Police to disclose pages 116, 117, 125-133, 150 in their entirety, and the highlighted portions of page 8, 38, 39, 40, 115, 147 to the appellant by February 26, 2001 but not before February 21, 2001.
2. I uphold the Police's decision to deny access to the videotape, pages: 3, 4, 6, 15, 41, 59-114, 118-124 in their entirety, and those portions of pages, 8, 38, 39, 40, 115, 147 which are not highlighted.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Dawn Maruno  
Adjudicator

\_\_\_\_\_ January 22, 2001