



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

# **FINAL ORDER MO-1404-F**

**Appeal MA\_000270\_1**

**Peel Regional Police Services Board**



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## **BACKGROUND:**

This order represents my final order in respect of the outstanding issues from Interim Order MO\_1398-I.

## **NATURE OF THE APPEAL:**

The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Peel Regional Police Services Board (the Police) for records which contain information about a complaint made against her by a named individual (the affected person) and any records generated by the Police as a result of the complaint.

The Police located responsive records and granted partial access to them. The Police withheld the remaining portions of the records on the basis of the exemption in section 38(b) (invasion of privacy) of the *Act* with reference to section 14(3)(b) (personal information compiled and identifiable as part of an investigation into a possible violation of law). In addition, some information was withheld as it was not responsive to the request.

The appellant appealed this decision to the Commissioner's office.

During mediation, the appellant agreed not to pursue the information that was withheld as being not responsive to the request. In addition, the appellant narrowed the scope of the request to what the named individual said to the Police. As a result, only a portion of the information originally withheld by the Police remains at issue. These portions of the records consist of the responsive information on page 3 (police officer's notes) and the information on the bottom of page 8 and the top of page 9 (occurrence report).

After sending a Notice of Inquiry, receiving representations from the Police only, and reviewing the records at issue, I issued Interim Order MO-1398-I. In that order, I found that the records contained the personal information of the appellant and another identifiable individual. I also found that the records satisfied the requirements of section 14(3)(b) of the *Act*, but that the Police had failed to exercise discretion under section 38(b) of the *Act*, which provides the Police with discretion to balance two competing interests - the appellant's right of access to her personal information and the other identifiable individual's right to privacy. If the Police were to conclude that the balance weighs in favour of disclosure, the records could be released to the appellant, even if the Police have determined that this disclosure would represent an unjustified invasion of the other individual's privacy.

I included a provision in Interim Order MO-1398-I requiring the Police to exercise discretion under section 38(b) with respect to the records and to provide me with representations as to the factors considered in doing so. I received representations from the Police in compliance with this provision.

## **DISCUSSION:**

## **Exercise of Discretion**

The Police have provided me with their representations on the exercise of discretion with respect to the records, which all contain the appellant's personal information. The Police maintain their earlier position that because the presumption in section 14(3)(b) applies, the exercise of discretion is not required. That being said, however, they indicate that they did consider the appellant's right to disclosure against the affected person's right to privacy.

The Police note that they contacted the affected person to determine whether she would consent to disclosure and that she emphatically refused her consent. The Police attached a copy of her letter refusing to consent to disclosure of her personal information and state:

Under the circumstances, there can be no doubt that disclosure would constitute an unjustified invasion of the affected party's privacy as the institution would not be taking into consideration this person's right to privacy and her request that her personal information not be released to the appellant.

The Police refer to the appellant's "quest" to resolve her problems through access to the records and allude to her efforts to access information. The Police indicate that they believe that to disclose the information in the records would only serve to "further inflame an already contentious matter" and exacerbate the situation.

An institution's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law. It is my responsibility to ensure that this exercise of discretion is in accordance with the *Act*. If I conclude that discretion has not been exercised properly, I can order the institution to reconsider the exercise of discretion [Order 58].

Having reviewed the reasons and rationale provided by the Police for exercising discretion under 38(b) of the *Act*, I find nothing improper. The Police have taken the particular circumstances of this case into account in exercising discretion in favour of protecting the privacy of the individual who complained about the appellant.

I will caution the Police, however, that the fact that a presumption applies to the personal information in the record, while certainly a consideration, is not, in and of itself sufficient as a basis for exercising discretion in favour of non-disclosure. In my view, taking that position essentially creates a blanket approach to the exercise of discretion, effectively negating any other circumstances that may be relevant in determining this issue. Such an approach could, and likely would, be seen as constituting a fettering of discretion.

## **ORDER:**

1. I uphold the decision of the Police and find that the records at issue qualify for exemption under section 38(b) of the *Act*.

Original signed by: \_\_\_\_\_ March 2, 2001  
Laurel Cropley  
Adjudicator