



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

ORDER MO-1340

Appeal MA-000157-1

Halton Regional Police Services Board



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Privacy Act (the Act) from a decision of the Halton Regional Police Services Board (the Police). The requester (now the appellant) made a request to the Police for written information about the reason for a telephone call to her on October 18, 1999, from a police officer.

The telephone call was in response to a complaint relating to the appellant's contacts with the members of a "support" group. During this telephone call, the Police cautioned the appellant against further contact with the members of the group. No further action was taken on the complaint.

The Police responded to the request for information by providing the appellant with a copy of an occurrence report dated October 18, 1999, with some of the information withheld. In withholding parts of the report, the Police relied on the provisions of section 38(b) of the Act (discretion to refuse requester's own information where disclosure would constitute an unjustified invasion of another individual's privacy), and on sections 8(2)(a) and 38(a) (report prepared in the course of law enforcement). In their decision, the Police also relied on sections 14(2)(f) (highly sensitive personal information); 14(3)(a) (medical, psychiatric or psychological condition); 14(3)(b) (investigation into a possible violation of law); and 14(3)(h) (racial or ethnic origin, sexual orientation or religious or political beliefs or associations).

During the course of responding to the request, the Police sought the consent of another individual whose rights may be affected by the disclosure of the record (the affected person), to the release of the information. The affected person, who is identified as the complainant on the occurrence report, did not consent.

The appellant has appealed the decision of the Police to deny access to parts of the report. During the course of this appeal, the Police sent written representations in response to a Notice of Inquiry. The appellant was subsequently invited to submit representations in response to those of the Police, a copy of which she was provided with portions deleted for confidentiality concerns, and has submitted her own.

RECORD:

The record consists of a one-page occurrence report, dated October 18, 1999. The part of the record which has been disclosed to the appellant briefly describes the officer's assessment of the situation and of a conversation with the appellant. It concludes by stating that the report is filed for information only. The part of the record to which access has been denied includes some narrative about and the name, address and telephone number of the affected person (the complainant), as well as information about the appellant's next of kin.

CONCLUSION:

I have decided that the Police were justified in deciding against release of the information in the record pertaining to the complainant. I have also decided that the appellant ought to be provided access to the information about her next of kin, since it was she who provided that information to the Police.

DISCUSSION:

INVASION OF PRIVACY

Personal information

It is necessary to decide, firstly, whether the record contains personal information, and if so, to whom that personal information relates, for the answer to these questions determines which parts of the Act may apply.

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.

On my review of the record, I am satisfied that it contains the personal information of the appellant, and of other individuals. Among other things, it records the name of the complainant, racial origin, a date of birth, home address and telephone number, other information about the complainant, and the name, address and telephone number of a person identified on the form as the appellant's "next of kin".

Discretion to refuse requester's own information

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exceptions to this general right of access.

Section 38(b) of the Act provides:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

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 another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Section 38(b) of the Act introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution the discretion to deny access to the personal information of the requester.

In determining whether section 38(b) applies, sections 14(2), (3) and (4) 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 head to consider in making a determination as to 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(3) lists the types of information whose disclosure is *presumed* to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

With respect to section 14(3), 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) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. In other words, once section 14(3) is found to apply, the factors in section 14(2) cannot be resorted to in favour of disclosure.

The institution has relied on the "presumed unjustified invasion of personal privacy" in sections 14(3)(a), (b) and (h) of the Act and the factor listed under section 14(2)(f) of the Act.

As I have indicated above, the information which remains at issue in this appeal consists of personal information about the complainant, and personal information about an individual identified as "next of kin" on the occurrence report. I will first turn to consider the application of the Act to the information of the complainant.

Information about the complainant

Section 14(2)(f)

Section 14(2)(f) provides:

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 personal information is highly sensitive;

The Police submit that the name of any individual on a police report, whether complainant, victim, suspect or accused, implies sensitivity and dictates privacy. The Police submit that if the public were to learn that the Police release their information, no one would ever contact them again. They submit that they always guarantee the protection of this information and it is only with written consent that they would release this type of third party information. The Police also state that the affected party has emphasized that he/she wishes this information to remain confidential. Further, they believe that the release of the information would add fuel to an already delicate situation.

The appellant has not specifically taken issue with the assertion that this information is highly sensitive. In general, she submits that she requires the names of the individuals who have caused false accusations to be made against her. She states that she has the right to this information, and

that the whole situation has driven her to mental illness and hospitalization.

In previous decisions, it has been said that for information to be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause excessive personal distress to the subject individual: see, for instance, Orders M-1053, P-1681 and PO-1736. Prior decisions have also found that the personal information of complainants, witnesses or suspects in police matters is highly sensitive: see, for instance, Order P-1618. In other contexts, the identity of complainants under environmental legislation (Order PO-1706) and workplace harassment policies (Order P-1245) has also been found to be highly sensitive. This does not mean that such information is necessarily exempt from disclosure. Each case must be assessed on its own facts, and in some cases, there may be other factors which favour disclosure, even where the information is highly sensitive.

I accept the findings in prior cases that the personal information of complainants in a police matter is highly sensitive, and I am satisfied that this applies to the facts before me. Further, the facts do not suggest the application of any of the criteria listed in section 14(2) of the Act which favour disclosure, and none were referred to in the representations. The factor of "fair determination of rights" in section 14(2)(d), for instance, which might play a large role in another set of facts, has no relevance here since no charges or other legal proceedings have been initiated or contemplated. From the statement on the record that the "report [is] filed for information only", it is apparent that the Police consider this matter closed.

I conclude, therefore, that the disclosure of the information of the complainant would constitute an unjustified invasion of the personal privacy of that individual, because of the application of section 14(2)(f) of the Act.

Because of my conclusion, it is unnecessary for me to consider whether the presumptions in section 14(3), relied on by the Police, might also apply to the information about the complainant.

In the circumstances, I am satisfied that the Police properly exercised its discretion under section 38(b) of the Act in deciding to withhold this information from the appellant.

Information about the next of kin

Section 14(2)

I reach a different conclusion with respect to the information about the appellant's next of kin. The Police acknowledge that this information was provided by the appellant, but submit that it ought not be disclosed to her because it would be an invasion of the privacy of that other individual. In my view, the considerations which apply to the identity of a complainant are not relevant to the identity of a person who is described as the next of kin on an occurrence report. Nothing before me establishes that it is "highly sensitive" within the meaning of section 14(2)(f), nor does it fall under any of the other factors listed in section 14(2) weighing against disclosure.

Favouring disclosure, on the other hand, is the fact that the information in question was provided by the appellant to the Police. Section 14(2) is not an exclusive list of the factors which may be taken

into consideration in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. I am satisfied that the source of this information is a relevant, though unlisted, factor in this determination. This is consistent with other orders which have found the disclosure of information provided by an appellant not to constitute an unjustified invasion of another person's privacy: see Orders P-1494 and M-451.

I conclude, therefore, that the disclosure to the appellant of the information relating to the individual identified as next of kin in the occurrence report would not constitute an unjustified invasion of the personal privacy of that individual under section 14(2) of the Act.

Section 14(3)(b)

The Police have submitted that the presumption in section 14(3)(b) applies to the information about the next of kin. In Order M-444, Adjudicator John Higgins found that, in circumstances where the information at issue was supplied by a requester, the application of the presumption in section 14(3)(b) to deny access to records containing a requester's personal information would lead to an "absurd result". He refused to apply the presumption in that case. I am satisfied that the principle of an "absurd result" is equally pertinent to the facts of this case. Given that the appellant provided the information about the next of kin to the Police, section 14(3)(b) therefore does not apply.

Further, because of my conclusion that the disclosure of this information to the appellant would not constitute an unjustified invasion of the privacy of the other individual, this information does not qualify for exemption under section 38(b) of the Act.

In arriving at my conclusions here, I have rejected the submissions by the Police that the information about the next of kin ought to be protected because its release to the appellant would be tantamount to disclosure to the world. The Police refer to the possibility that the individual might have an unlisted address or telephone number which will become public upon disclosure. In my view, this concern is misplaced, since disclosure to the appellant does no more than provide her with information which was already in her possession.

LAW ENFORCEMENT

In addition to section 38(b) of the Act, another exemption to the general right of access is found in section 38(a) of the Act, under which the institution has the discretion to deny an individual access to their own personal information in instances where the exemptions in sections 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

In this case, the Police have relied on section 8(2)(a) in exercising their discretion under section 38(a), claiming that the occurrence report is a "report prepared in the course of law enforcement", pursuant to those provisions as follows:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In order for a record to qualify for exemption under section 8(2)(a) of the Act, the institution must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

Previous orders have stated that for a record to be a "report", it must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact: see Order MO-1196. Since many occurrence reports consist of factual accounts together with observations by the investigating police officers, prior decisions have concluded, in many cases, that they do not meet the definition of "report" under this section of the Act: see, for instance, Orders MO-1196, M-1093 and P-1618.

In the case before me, it is unnecessary for me to consider whether the occurrence report meets the definition of "report" for the purposes of section 8(2)(a). I have already found that the information relating to the complainant should not be disclosed, because of the application of sections 14(2) and 38(b) of the Act. The only remaining information to consider is that which was provided by the appellant, namely, the identity and other information about a next of kin. For the same reasons I have expressed above, I am satisfied that whether or not the occurrence report meets the requirements of section 8(2)(a), denial of this information to the appellant would lead to an "absurd result" not intended by the legislation.

I am reinforced in this conclusion by the reasons in Order PO-1708, in which Assistant Commissioner Tom Mitchinson refused to apply section 14(2)(a) [the provincial equivalent to 8(2)(a)] to investigative reports compiled under the Police Services Act, because of an absurd result.

I therefore find that the occurrence report does not qualify for exemption under section 8(2)(a) in the context of section 38(a) of the Act.

ORDER:

1. I uphold the decision of the Police to deny access to information in the record about the complainant.

2. I order the Police to disclose the information in the record about the next of kin. For greater certainty, I have provided a highlighted copy of the occurrence report for the Police indicating those portions which shall be disclosed.
3. I order disclosure to be made by sending the appellant a copy of the record, excluding the exempted portions, by no later than **October 11, 2000**.
4. In order to verify compliance with Provision 2 of this order, I reserve the right to require the Police to provide me with a copy of the material sent to the appellant.

Original signed by: _____
Sherry Liang
Adjudicator

_____ September 20, 2000