



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1486

Appeal MA-010139-1

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant wrote to the Halton Regional Police Service (the Police) seeking access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to a specific occurrence report.

The Police then notified two affected persons of the request and sought their views on disclosure. Only one of the two affected persons responded, indicating that he did not want his personal information disclosed.

The Police later advised the appellant that it had decided to grant partial access to the record, and that portions were being withheld on the basis of the exemption at section 38(b) in conjunction with section 14 (personal privacy), as well as section 38(a) in conjunction with section 8 (law enforcement).

The appellant then appealed the decision of the Police to this office.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the Police, who provided representations in response. I then sent the Notice of Inquiry to the appellant, together with the non-confidential representations of the Police. The appellant did not provide representations in response.

RECORDS:

The record at issue in this appeal is a six page occurrence report.

DISCUSSION:

PERSONAL PRIVACY

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:

The recorded information contained within the occurrence report contains the personal information of the appellant and that of two other individuals. The information includes name, date of birth, address, sex, race and telephone number, along with financial information . . . As per the definition in the *Act*, all of this constitutes personal information.

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We have determined that the record contains mixed personal information. The occurrence report contains recorded information about the appellant and two other individuals . . .

Based on my review of the record and the representations of the Police, I am satisfied that the record contains the personal information of the appellant, as well as the two other individuals referred to by the Police (the affected persons), including names, dates of birth, addresses, sex, race, telephone numbers and other information about the individuals in relation to the matters under investigation by the Police.

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.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the *Act* prohibits an institution from releasing this information.

In both these situations, 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].

In this case, the Police have cited section 14(1)(f) (unjustified invasion of personal privacy), together with the presumption at section 14(3)(b). Section 14(3)(b) reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

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 pertaining to the affected individuals was compiled as part of a law enforcement investigation. The Police investigated and cautioned the appellant with respect to making the phone calls and allegations.

As previously stated, the occurrence report consists of the facts in the case and the way the officer concluded his investigation. Therefore since the personal information relates to records compiled as part of an investigation into an allegation of harassing phone calls, the disclosure of the personal information is presumed to be an invasion of their personal privacy . . . [T]his institution could not see any circumstances, which would modify or rebut this presumption . . .

Based on my review of the record, the representations of the Police and the surrounding circumstances, I am persuaded that the personal information contained in the record at issue was compiled and is identifiable as part of a possible violation of law, the *Criminal Code*. As a result, the section 14(3)(b) presumption applies, and the personal information in the record relating to the affected persons qualifies for exemption under section 38(b) of the *Act*.

In addition, based on my review of the severed version of the record disclosed to the appellant, I am satisfied that the Police disclosed as much information about the appellant as reasonably possible in the circumstances, without disclosing exempt information.

As indicated above, section 38(b) of the *Act* is discretionary. Therefore, the Police could have disclosed the withheld information to the appellant, notwithstanding that it qualifies for exemption. With regard to the exercise of discretion, the Police state:

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by a government institution. This institution understands that [section] 38(a) and (b) of the *Act* provides a number of exceptions to this general right of access but it also introduces a balancing principle. The report contains both the personal information of the appellant and the personal information of the affected individuals. However, after carefully balancing the right of the appellant to know and the right of the affected third parties to privacy, a discretionary decision was made by this institution to deny access to a portion of the occurrence report . . .

In the circumstances, I am satisfied that the Police exercised discretion under section 38(b) appropriately.

ORDER:

I uphold the decision of the Police.

Original Signed By: _____

David Goodis
Senior Adjudicator

November 19, 2001