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

ORDER MO-1480

Appeal MA000237-1

Elliot Lake Police Service

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NATURE OF THE APPEAL:

This is an appeal from a decision of the Elliot Lake Police Service (the Police), under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester, now the appellant, sought access to an occurrence report and all witness statements in relation to an incident involving his daughter (at the time of the occurrence, thirteen years of age; at present, fifteen).

The Police located one record and denied access to it, relying on section 14(1) of the *Act* (unjustified invasion of personal privacy). The appellant has appealed the denial of access.

I sent a Notice of Inquiry to the Police and two affected parties, initially, inviting them to make representations in this matter. I received no representations from the Police. I received correspondence from the affected parties simply indicating that they do not consent to the release of any of their information. The appellant was also invited to make representations, and has.

CONCLUSION:

I conclude that the appellant is entitled to have access to the record at issue.

RECORD:

The record at issue consists of a one-page General Occurrence Report. The record describes the circumstances under which the author, a police officer, received a report about an alleged assault on the appellant's daughter. The record sets out the substance of an interview with the appellant's daughter, describes the visit by two police officers to her residence and statements given by the mother of the alleged victim and the person against whom the allegation was made. It also sets out the observations and actions of the officers involved in dealing with the allegation.

DISCUSSION:

CUSTODIAL PARENT

Section 54(c) of the *Act* provides that the right of access under the *Act* may be exercised, where an individual is under the age of sixteen years, by a person who has lawful custody of the individual. Where section 54(c) applies, the custodial parent may "stand in the shoes" of his or her child. An institution considering a request for access by the parent for information about the child must apply the standards under the *Act* as though it were the child requesting his or her own personal information (see, for instance, Order M-927).

It appears from the material before me, including the representations of the appellant, that the maternal grandmother currently has custody of the child in question. Accordingly, the appellant cannot rely on the provisions of section 54(c) in this appeal. I will therefore turn to consider his right to have access to the information in the record under other provisions of the *Act*.

PERSONAL INFORMATION

Under section 2(1) of the *Act*, "personal information" is defined as "recorded information about an identifiable individual". I have reviewed the record at issue, and find that it contains information relating to the appellant's daughter, her mother, the alleged assailant and a person to whom care of the children was temporarily given. It does not contain any personal information of the appellant.

Although there is also information about police officers and child welfare workers, I find that this information is about them in a professional and not personal capacity, and does not therefore qualify as personal information (see, for instance Reconsideration Order R-980015 and Order PO-1663).

Section 14(1) of the *Act* provides, in part:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(1)(d) provides an exception to the section 14(1) prohibition on access. If disclosure of information is expressly authorized by a provincial or federal statute, section 14(1) does not operate to prevent disclosure of that information.

The appellant has referred me to certain provisions of the *Children's Law Reform Act* (the *CLRA*) in support of his position. The most relevant part of the *CLRA* is section 20(5), which states:

> The entitlement to access to a child includes the right to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child.

In Order M-787, Adjudicator Holly Big Canoe considered the relationship between section 16(5) of the *Divorce Act* and section 14(1)(d) of the *Act*, concluding that reference in the *Divorce Act* to the provision of information "as to the health, education and welfare of the child" to an individual who has access rights falls within the exception contained in section 14(1)(d). In that order, Adjudicator Big Canoe also found that once section 14(1)(d) is found to apply, the mandatory prohibition against disclosure does not. It cannot be argued, therefore, that disclosure should be prohibited because it may constitute an unjustified invasion of personal privacy.

In Orders P-1246, and subsequently P-1423, other adjudicators applied the reasoning in Order M-787, and found that the right to information contained in section 20(5) of the CLRA, which is

effectively the same as that contained in section 16(5) of the *Divorce Act*, falls within section 21(1)(d) of the provincial *Act* (the provincial equivalent to section 14(1)(d)).

The result of these orders is that individuals who are entitled to have access to a child, and therefore to the information described by the CLRA, cannot be prevented from having access to that information because of the provisions of section 14(1) of the Act. Together, the provisions of the CLRA and this *Act* express a policy that in these limited circumstances, the welfare of children overrides personal privacy rights.

The appellant has provided me with a copy of a court order, dated November 1, 2000, which grants him unsupervised reasonable access to his three children, including the child in question. There is no evidence that this order has been rescinded or that the appellant's access to his children has been otherwise revoked. I am satisfied that the appellant is an individual who has access to his children and therefore access to the information specified in section 20(5) of the CLRA.

Since the disclosure to the appellant of information which pertains to the health, education or welfare of his children is expressly authorized by section 20(5), the exception provided by section 14(1)(d) applies. I find that all of the information in the record can reasonably be viewed as pertaining to the "welfare" of the appellant's child. As no other exemptions have been relied on by the Police in their decision to deny access, the appellant is entitled to have access to the record in its entirety.

ORDER:

I order the Police to disclose the record to the appellant, no later than **November 28, 2001** but no sooner than **November 21, 2001**.

Original signed by: October 31, 2001
Sherry Liang
Adjudicator