



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1466

Appeal MA-000198-2

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

NATURE OF THE APPEAL:

The Ottawa-Carleton Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

any and all information your department has on file pertaining to myself . . .
including any documentation relating to background investigations, occurrence
reports, Provincial/Federal charges, criminal history and any other records/reports
. . .

In a decision dated May 9, 2000, the Police granted partial access to some of the information, and making severances to other portions of the records under section 14(1) of the *Act*. In addition, the Police advised the requester that information pertaining to background investigations is excluded from the ambit of the *Act* by section 52(3)3.

The requester, now the appellant, appealed the decision of the Police to exclude records under section 52(3)3 of the *Act*, and a file was opened at this office as Appeal Number MA-000198-1. During the mediation stage of the appeal, the Police withdrew their reliance on section 52(3)3 of the *Act*, and agreed to issue a new decision letter to the requester regarding access to the responsive records. Accordingly, a Mediator's Report was issued, and the original appeal file, MA-000198-1, was closed by this office.

The Police subsequently issued a decision dated November 6, 2000, granting the appellant complete access to a one page document entitled "Employment Application Investigation". Access to the remaining 22 pages of responsive records was denied under the following exemptions contained in the *Act*:

- sections 14(1) and 38(b) - invasion of privacy, with reference to the presumptions in sections 14(3)(b) (information compiled as part of a law enforcement investigation), 14(3)(d) (employment or educational history) and 14(3)(g) (personal recommendations or evaluations, character references or personnel evaluations) and the consideration listed at section 14(2)(h) (information supplied in confidence); and
- section 38(c) - evaluative or opinion material.

The requester, now the appellant, appealed the decision of the Police to deny access to the undisclosed records. I decided to seek the representations of the Police, initially. They made submissions which were shared, in part, with the appellant. Portions of the representations provided to me by the Police were severed due to concerns that I had about the confidentiality of the information referred to therein. The appellant has also made representations in response to the Notice of Inquiry provided to him.

RECORDS:

The records at issue consist of a document entitled "Employment Application Investigation" (Pages 2 to 19) and a four-page document entitled "Volunteer Application Investigation" (Pages 20 to 23).

DISCUSSION:

PERSONAL INFORMATION

The personal privacy exemptions referred to in section 38 apply only to information which qualifies as “personal information”, as defined in section 2(1) of the *Act*. “Personal information” is defined, in part, to mean recorded information about an identifiable individual, including 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 [paragraph (h)].

The Police submit that the records contain the personal information of the appellant, including information relating to his education, criminal and employment history (section 2(1)(b)) and the views and opinions of other individuals about the appellant (section 2(1)(g)). In addition, the Police indicate that the records also contain the personal information of other individuals who supplied information to them in the course of the investigation of the appellant including the name, address and telephone number of the individuals (section 2(1)(d)) and the individual's name which appears with other personal information relating to that individual (section 2(1)(h)).

Based on my review of the records, I make the following findings:

- all of the records contain the personal information of the appellant, including information relating to his education, criminal and employment history (section 2(1)(b)), identifying numbers assigned to incidents involving the appellant (section 2(1)(c)), the views or opinions of other individuals about the appellant (section 2(1)(g)) and the appellant's name along with other personal information relating to him (section 2(1)(h)).
- Records 4, 5, 7, 10, 11, 12 and 13 contain the personal information of the appellant and other identifiable individuals, including information relating to their age, sex, or marital or family status (section 2(1)(a)), information relating to their education, medical or employment history (section 2(1)(b)), their addresses or telephone numbers (section 2(1)(d)) and their names along with other information whose disclosure would reveal other personal information about them (section 2(1)(h)).
- Records 2 to 10, 14, 16, 17, 21 and 22 contain information which was provided to the investigator by officers employed by various police services. This information was provided by these officers in the course of their professional duties, as opposed to their personal capacities. As such, this information does not qualify as the personal information of those officers.

EVALUATIVE OR OPINION MATERIAL

The Police submit that all of the records are exempt from disclosure under the discretionary exemption found in section 38(c) of the *Act*. This section states:

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

that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by an institution if the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;

For a record to qualify for exemption under section 38(c), the Police must satisfy each part of the following three-part test:

1. the personal information itself must be evaluative or opinion material;
2. the personal information must be compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits;
3. disclosure of the personal information would reveal the identity of a source who furnished information to the Police in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence.

[Order 157]

Having reviewed the records and the circumstances of the appeal, I am satisfied that the first two parts of the above test have been met. The personal information is evaluative or opinion material and was compiled solely for the purpose of determining the appellant's suitability for employment as a police officer.

In my view, in order for the third part of the test to more clearly address the complex wording found in section 38(c), it should be divided into two components. That is to say, the Police must establish that:

- (a) The information was supplied to the Police in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence; **and**
- (b) The disclosure of the record would reveal the identity of the source of the information.

[Order M-132]

The contents of the records themselves make it quite clear that their disclosure would reveal the identity of the source of the information. The records also contain information which would unequivocally identify the individuals who provided certain information to the Police. Accordingly, I find that component (b) of the third part of the test has been met.

With respect to component (a), I find that it is reasonable to assume that, in the circumstances of the Police investigation of the appellant, the informants would have expected that the information provided to the Police would be treated in a confidential manner. This is particularly so with respect to the individual whose personal information is contained at pages 12 and 13 of the records. The nature of the inquiries made by the investigator and the responses elicited from those interviewed lead me to the conclusion that there existed an expectation that the information would be treated confidentially. As all three parts of the test enunciated for section 38(c) have been satisfied, I find that the personal information contained in the records, with the exception of that noted below, is exempt from disclosure under section 38(c).

However, I find that with respect to the individuals whose names were provided to the Police by the appellant as references, it cannot reasonably be assumed that their identity would be held in confidence. Accordingly, section 38(c) does not apply to the information on pages 10, 11 and 12 of the records which was provided by the appellant's own references. I will now address the possible application of section 38(b) to these portions of the records.

INVASION OF PRIVACY

The Police have also claimed the application of the discretionary exemption in section 38(b) to apply to those portions of the records remaining at issue, the information provided to the Police by the appellant's references, contained in pages 10, 11 and 12.

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), where a record contains the personal information of both the requester and other identifiable 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* provides that:

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;

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

then section 38(b) gives him the discretion to deny access to the personal information of the requester.

In determining whether the exemption in 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 this determination. 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.

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].

The Police submit that the presumptions in sections 14(3)(b), (d) and (g) apply to the personal information contained in the records which remains at issue. These sections state:

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

- (b) 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;
- (d) relates to employment or educational history;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations.

In addition, the Police submit that the personal information submitted by the appellant's references was provided with an expectation of confidentiality, as contemplated by section 14(2)(h).

The appellant submits that the Police have received incorrect information about him and that they continue to share this information with other institutions. He indicates that he wishes to obtain access to the information in order to request a correction of his personal information under section 36(2) of the *Act*. I find this to be a relevant, though unlisted, consideration under section 14(2) which weighs in favour of disclosure. In my view, this factor carries little weight, however, as the appellant has been made aware of the contents of the evaluation records and the reasons for his not being considered as a suitable candidate for employment by the Police.

In my view, the purpose behind the creation of the records was not the investigation of a possible violation of law, as is required under section 14(3)(b). Rather, the Police concede that the

records were prepared in furtherance of their obligations under section 43(1) of the *Police Services Act* to ensure that prospective police officers are suitable for this very important role in our society. I find, accordingly, that the presumption described in section 14(3)(b) has no application to the personal information contained in the records.

In addition, I find that the personal information contained in the records describing an individual's employment or educational history relates only to the appellant. Accordingly, the presumption in section 14(3)(d) has no application in the present circumstances.

Further, it has been established in a number of previous orders that section 14(3)(g) raises a presumption concerning recommendations, evaluations or references **about** the individual rather than evaluations **by** that individual (Orders 171 and MO-1290). Accordingly, this presumption cannot apply to information provided by other individuals about the appellant.

The Police submit and I accept that all of the individuals, including the appellant's references, who provided information to the Police about the appellant's suitability to serve as a police officer were advised that they were providing this information in confidence. However, I find that it would be unreasonable on the part of the individuals named by the appellant as references to expect that the information which they provided would be treated strictly in a confidential fashion. Accordingly, I am satisfied that section 14(2)(h), a factor which favours privacy protection, applies but that it carries little significant weight.

In my view, the appellant has not raised any considerations, listed or otherwise, under section 14(2) which would outweigh the factor favouring the non-disclosure of the personal information on pages 10, 11 or 12 to him. I find that the unlisted consideration relied upon by the appellant is not of sufficiently significant weight to tip the balance in favour of disclosure. Balancing the appellant's right of access to his personal information against the right of the references who provided information to the Police to the protection of their privacy, I find that section 38(b) applies to the information provided by these individuals.

ORDER:

I uphold the decision of the Police to deny access to the requested records.

Original signed by: _____
Donald Hale
Adjudicator

September 19, 2001 _____