



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1551**

**Appeal MA-010355-1**

**Guelph Police Services Board**



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## **NATURE OF THE APPEAL:**

This appeal concerns a decision of the Guelph Police Service (the Police) made pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access to information obtained by the Police regarding a telephone harassment complaint filed by the appellant with the Police.

In its decision letter, the Police denied access to the records requested pursuant to sections 14 and 38 of the *Act*.

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

During the mediation stage of this appeal the Police issued a second decision letter. In this decision letter, the Police agreed to release severed versions of five pages of records (records 04, 06, 07, 08 and 09). The Police stated that references to third parties or personal information about third parties would be deleted, pursuant to section 14 of the *Act*. In addition, the Police indicated that it would continue to deny access to Bell Canada phone records, pursuant to section 14, section 8(1)(h) and section 8(2) of the *Act*, stating that the records were reports "...prepared in the course of law enforcement." [section 8(2)(a)]. The Police then issued a third decision letter in which it agreed to release a one page record (record 05). This record contains the notes taken by a police officer after speaking with the appellant about her telephone harassment complaint. Prior to the issuance of the Report of Mediator, the Police raised, for the first time, its reliance upon section 8(1)(c) in regard to records 08 through 10.

During the mediation stage, the appellant accepted the institution's explanation that paragraph three of record 04 was not responsive to her request. This portion of the record is, therefore, not at issue in this appeal.

Portions of records 06 and 07 are "blacked out". The appellant accepted the institution's explanation that the "blacked out" portions of the records were not responsive to her request. Accordingly, the "blacked out" portions of these records are not at issue in this appeal.

During mediation, the mediator confirmed with the Police that it is relying upon sections 38(a) and 38(b) of the *Act*.

Further mediation was not possible. The appeal was moved to inquiry. I initially sought representations from the Police. The Police's representations were shared with the appellant in their entirety. I, subsequently, received representations from the appellant.

During the inquiry process, but prior to the issuance of this order, the Adjudication Review Officer contacted the appellant to confirm her interest in the records for which the Police had claimed an exemption under sections 8(1)(c) and 38(a) of the *Act* (records 08 to 10). The appellant confirmed the information that she was seeking and that she was not interested in the records for which the Police had claimed exemptions under sections 8(1)(c) and 38(a). Records 08, 09 and 10 are, therefore, no longer at issue in this appeal.

## RECORDS:

There are nine records at issue. The records at issue and the exemptions claimed are described in the following table:

Record #	Description	Severed or Withheld in Full	Exemption Claim
04	Typed summary	Severance in line 6	14, 38(b)
06	Handwritten notes	Severance in last line	14, 38(b)
07	Handwritten notes	Severance in first line	14, 38(b)
11-16	Fax transmittal sheet with attachments	Withheld in full	14, 8(1)(h), 8(2)(a), 38(a), 38(b)

## CONCLUSION:

I have concluded that the information severed from records 04, 06 and 07, and records 11 to 16 in their entirety, are exempt from disclosure.

## DISCUSSION:

### INVASION OF PRIVACY

#### Personal Information

It is necessary to decide, firstly, whether the records contain 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 records, I am satisfied that the records contain the personal information of the appellant, and of other individuals. Among other things, they contain the names of the appellant and of other individuals, portions of a police report (listing an unnamed individual's telephone number), the appellant's address and telephone number, and the addresses and telephone numbers of other individuals.

#### 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,

- (b) 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 his or her 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.

In the case before me, the Police have relied on section 14(3)(b) to deny access to the information contained in records 04, 06 and 07. In addition, the Police are relying upon section 14(3)(b), read in conjunction with section 38(b), to deny access to the information contained in records 04, 06 and 07. The Police have also indicated in their representations that they are relying upon sections 14(3)(b) and 38(b) to deny access to records 12, 13, 15 and 16. However, the Police have also claimed that records 11 through 16 are exempt from disclosure pursuant to section 8(1)(h). I will, therefore, address the disposition of records 11 through 16 in my discussion of section 8(1)(h) below.

Section 14(3)(b) provides:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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 that the information in the records was obtained through a law enforcement investigation commenced after receiving a complaint from the appellant regarding the receipt of harassing telephone calls. As part of its investigation, the Police obtained information from the appellant and issued a search warrant on Bell Canada to obtain records that contain the numbers and identity of the owners of telephone numbers from which the alleged harassing telephone calls were made. In their representations, the Police refer to the sections of the *Criminal Code* that address the offences of criminal harassment through repeated communication [Section 264(2)(b)] and making harassing telephone calls [Section 372(3)].

The Police have stated in their representations that no criminal charges were laid as a result of their investigation. The Police indicate that they decided not to lay charges for three reasons: two calls were traced from two different sources; the messages left by the callers, while harassing, were not threatening; and, there were several occupants of the residences, to which the calls were traced, who could have made the calls. However, previous decisions have stated that the absence of charges does not negate the application of section 14(3)(b): see, for instance, PO-1715.

Turning to the records in this appeal, record 04 appears to be a police officer's report documenting events pertaining to the appellant's complaint. The severed portion of record 04 contains a telephone number from which a telephone call originated on a particular date. The Police describe this severance in their representations as "...the telephone number of a suspect in a criminal harassment investigation.". Records 06 and 07 are police officer's notes documenting information received from the appellant regarding her complaints. The one severance on record 06 is described by the Police as "...the name of a suspect in a criminal harassment investigation.". The one severance on record 07 is described by the Police as "...the name of a potential suspect as suggested by the appellant.".

I am satisfied that section 14(3)(b) applies to records 04, 06 and 07. The information in the records was compiled and is identifiable as part of an investigation into a possible violation of law. It must be presumed that the disclosure of the personal information of affected persons would be an unjustified invasion of their personal privacy.

## **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 his or her 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 sections 8(1)(h) and 8(2)(a) in relation to records 11 to 16, in exercising their discretion under section 38(a). I will consider whether section 38(a) together with sections 8(1)(h) and 8(2)(a) apply to exempt records 11 through 16 from disclosure.

Records 11 through 16 can be described generally as a fax transmission from Bell Canada containing results of an investigation conducted by Bell Canada. Record 11 is a fax cover sheet. Record 12 is described by the Police as an "Annoyance Report" which contains the name, telephone number and address of the appellant. Record 13 contains the telephone number of the appellant as well as two telephone numbers traced from the appellant's number by Bell Canada. Record 14 contains the name, address and telephone number of the appellant. Records 15 and 16 contain the names, telephone numbers and addresses of the persons traced as the source of calls to the appellant.

Section 8(1)(h) reads as follows:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;

In Order M-610, former Adjudicator Holly Big Canoe stated:

In my view, section 8(1)(h) allows the Police to deny a requester access to a record where either the record at issue is itself a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation, or where the disclosure of the record could reasonably be expected to reveal another record which has been confiscated from a person by a peace officer, in accordance with an Act or regulation.

In that case, former Adjudicator Big Canoe found that the section 8(1)(h) exemption applied to information that had been confiscated by a police officer employed by a police force as a result of the execution of a search warrant obtained under the authority of section 487 of the *Criminal Code* (the *Code*).

In the circumstances of this case, the Police have provided me with representations indicating that records 11 through 16 were obtained from Bell Canada pursuant to a search warrant issued under section 487 of the *Code*. Having carefully considered the representations of the Police, and the provisions of section 487 of the *Code*, I am satisfied that the Police have provided sufficient evidence to establish that records 11 through 16 meet all the requirements to qualify for exemption under section 8(1)(h) of the *Act*. In light of my decision under section 8(1)(h) of the *Act* I do not need to consider the application of section 8(2)(a).

**ORDER:**

I uphold the Police's decision to deny access to the severed parts of records 04, 06 and 07, under section 14 of the *Act* and I uphold the Police's decision to deny access to records 11 through 16, in their entirety, under section 8(1)(h) of the *Act*.

Original signed by: \_\_\_\_\_  
Bernard Morrow  
Adjudicator

\_\_\_\_\_ June 18, 2002