



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1546**

**Appeal MA-010171-2**

**Waterloo Regional Police**



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/Téloc: 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 Protection of Privacy Act* (the *Act*) from a decision of the Waterloo Regional Police (the Police). The requester (now the appellant) requested access to all information held by the Police relating to a specific incident that was investigated by the Police. The Police granted partial access to the responsive records, but denied access to other portions of the records based on the exemptions in section 8 (law enforcement), section 13 (danger to safety or health), and sections 14 and 38 (invasion of privacy).

The appellant appealed the decision of the Police, and Appeal Number MA-010171-1 was opened (the first appeal). During the mediation stage of the first appeal, the appellant removed page 7 of the records from the scope of the appeal, and added the issue of the reasonableness of the search for responsive records. The appellant specifically requested the notes of one of the investigating officers who had provided an affidavit indicating that he had misplaced his notebook that contains references to the incident at issue (the notebook).

In my Order MO-1490, I upheld the decision of the Police to grant partial access to the records. I also accepted the explanation of the Police about the notebook and, on this basis, concluded that the Police had conducted a reasonable search for responsive records.

Subsequently, the Police located the notebook, and issued a decision to the appellant denying access to two pages containing responsive information, on the basis of the same exemptions relied on to deny access to the records at issue in the first appeal.

During the mediation stage of the second appeal, the Police decided to grant partial access to page two of the notes. A full settlement of the issues could not be achieved in mediation, so the matter was moved to the inquiry stage of the appeal.

I sent a Notice of Inquiry seeking representations on the applicability of the claimed exemptions initially to the Police, which provided representations in response. The Police provided some new representations, but indicate it relies largely on the representations made in the earlier appeal. I then sent the representations of the Police to the appellant, together with the Notice of Inquiry. The appellant returned representations.

## **RECORDS:**

At issue are all of page one, and portions of page two, of a two-page excerpt from the notebook.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

#### **Introduction**

The section 14 personal privacy exemption applies 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 any identifying

number assigned to the individual [paragraph (c)] 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 [paragraph (h)].

The Police submit that the withheld information reveals an affected person's name, race, age, home address and telephone number, as well as other information about the affected person's involvement in the incident in question, all of which is personal information under the definition in section 2(1) of the *Act*.

The appellant makes no specific submissions on this issue.

Based on my review of the records and the representations, I find that the records contain personal information about the affected person, including her name, age, home address and telephone number, as well as other information about the affected person's involvement in the incident in question. This information is clearly "about" the affected person and therefore qualifies as her personal information. In addition, I find that the records contain the personal information of the appellant, similar in nature to the information relating to the affected person.

#### **RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/INVASION OF ANOTHER INDIVIDUAL'S PRIVACY**

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.

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 the other 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 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 institution 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].

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption. [See Order PO-1764]

If none of the presumptions in section 14(3) applies, the institution must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

Here, the Police have relied on the presumption of an unjustified invasion of privacy at section 14(3)(b), which reads:

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 withheld information “was compiled and is identifiable as part of an investigation into a possible violation of law”, in particular a possible violation of the *Criminal Code*.

The appellant makes no specific submissions on the application of the section 14(3)(b) presumption.

In the circumstances, similar to my findings in Order MO-1490, it is clear that the Police compiled the information in question as part of an investigation into a possible violation of law, specifically the *Criminal Code*. Therefore, the withheld information falls within the scope of the section 14(3)(b) presumption of an unjustified invasion of the affected person’s privacy, and thus the section 38(b) exemption applies.

In addition, I am satisfied that during mediation the Police disclosed as much information to the appellant as reasonably possible, without disclosing information that qualifies for exemption under section 38(b) of the *Act*. Further, I am satisfied that the Police properly exercised its discretion under section 38(b) in denying access to the withheld portions of the notebook.

In the circumstances, it is not necessary for me to consider the application of section 38(a) in conjunction with sections 8 and/or 13.

**ORDER:**

I uphold the decision of the Police and dismiss the appeal.

Original Signed By: \_\_\_\_\_

David Goodis  
Senior Adjudicator

\_\_\_\_\_ June 6, 2002