



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1689**

**Appeal MA-030043-1**

**Halton Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Halton Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to certain occurrence reports stemming from two incidents which took place at the requester's home in December 2002. The Police located the responsive records and granted the requester access to the majority of the information contained in them. Access to portions of the responsive records was denied, pursuant to the following exemptions contained in the *Act*:

- endanger life or safety – section 8(1)(e)
- facilitate commission of an unlawful act – section 8(1)(l)
- law enforcement – section 8(2)(a)
- discretion to refuse requester's own information – section 38(a)
- invasion of privacy – section 38(b), relying on the presumptions in section 14(3)(b) (information compiled as part of a law enforcement investigation) and 14(3)(h) (information relating to an individual's race or ethnic origin) and the consideration listed in section 14(2)(f) (the information is highly sensitive)

The requester, now the appellant, appealed the decision of the Police to deny access to portions of the responsive records. Mediation of the appeal was not possible and the matter was moved to the adjudication stage of the appeal process.

I decided to seek the representations of the Police, initially, as they bear the onus of demonstrating the application of the exemptions claimed for the records. The Police made representations, the non-confidential portions of which were shared with the appellant, along with a copy of the Notice of Inquiry. The appellant did not provide any representations in response to the Notice.

## **RECORDS:**

The records at issue consist of the undisclosed portions of an arrest report, a follow-up report and an occurrence report.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The personal privacy exemption in section 38 (b) 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 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, her two children and another identifiable individual (the affected person), including this person's name, address, age, sex, race and telephone number. As a result, the Police argue that this information

qualifies as the “personal information” of the affected person as that term is defined in section 2(1) of the *Act*.

I have reviewed the contents of the records and find that they contain the personal information of the appellant, the appellant’s son and daughter and the affected person. The personal information relating to the affected person consists of this individual’s name, age, sex, address, telephone number and race, along with other personal information about this individual. All of the records were disclosed to the appellant, with the exception of the personal information of the affected person.

### **INVASION OF PRIVACY**

The Police rely on section 38(b) of the *Act* in conjunction with section 14 to support their denial of access to the undisclosed portions of Records 1, 2, 3, 5, 6 and 7. More specifically, the Police rely on the “presumed unjustified invasion of personal privacy” at section 14(3)(b). These sections read:

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;

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;

Because I have found that the records contain the personal information of the appellant and other individuals, I must determine whether these records qualify for exemption under section 38(b) of the *Act*.

### **Application of the discretionary exemption at section 38(b)**

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 exemptions from disclosure that limit this general right.

Under section 38(b), where a record relates to the requester but disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the institution may refuse to disclose that information to the requester.

Sections 14(1) through (4) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of an individual's personal privacy under section 38(b). Sections 14(1)(a) through (e) provide exceptions to the personal privacy exemption; if any of these exceptions apply, the information cannot be exempt from disclosure under section 38(b).

Section 14(2) provides some criteria for determining whether the personal privacy exemption applies. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the "compelling public interest" override at section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

If none of the presumptions in section 14(3) applies, the Police must consider the factors listed in section 14(2), as well as all other relevant circumstances.

The purpose of section 38(b) is to protect the personal privacy of individuals other than the appellant. The Police submit that the personal information remaining at issue in this appeal "was compiled as part of a law enforcement investigation" into two separate incidents involving the appellant. The Police also indicate that the information is not subject to the exceptions in section 14(4) and the appellant has not raised the possible application of section 16 of the *Act*. As a result, they argue that the presumption in section 14(3)(b) applies to the personal information and that its disclosure to the appellant would constitute a presumed unjustified invasion of the personal privacy of the affected person.

I agree with the position taken by the Police. I find that the personal information contained in the records which relates to the affected person was compiled as part of a police investigation into possible criminal wrongdoing by the appellant. The fact that charges did not result from this investigation does not negate the application of the presumption in section 14(3)(b) [Orders MO-1451, MO-1524-I, MO-1561, PO-1779, PO-1908 and PO-1966]. As a result of the operation of the presumption in section 14(3)(b), I find that the disclosure of the undisclosed personal information is presumed to constitute an unjustified invasion of personal privacy. The exceptions in section 14(4) do not apply and the appellant has not raised the possible application of the "public interest override" provisions in section 16. As a result, I find that the information remaining at issue is exempt from disclosure under section 38(b).

### **Exercise of Discretion**

The Police have provided me with submissions supporting their decision to exercise discretion in favour of not disclosing the information to the appellant. The Police state that they have "chosen to err on the side of privacy in the balancing of rights." Based on my review of the submissions

of the Police and the records themselves, I am satisfied that the Police did not err in exercising their discretion to withhold the remaining undisclosed portions of the records.

**ORDER:**

I uphold the decision of the Police.

Original signed By: \_\_\_\_\_

Donald Hale  
Adjudicator

\_\_\_\_\_  
September 23, 2003