



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1745

Appeal MA-030270-1

The Greater Sudbury Police Service



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NATURE OF THE APPEAL:

The Greater Sudbury 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 an occurrence report pertaining to an incident involving the requester. The Police located the requested record and denied access to portions of it, claiming the application of the following discretionary exemptions contained in the *Act*:

- Discretion to refuse requester's own information – section 38(a), in conjunction with section 8(2)(a) (law enforcement); and
- Invasion of privacy – section 38(b), with reference to the presumption in section 14(3)(b) (information compiled as part of an investigation into a possible violation of law)

The requester, now the appellant, appealed the decision of the Police. Mediation was not successful and the appeal was moved into the adjudication stage of the process. I decided to seek the representations of the Police, initially. I received their submissions and shared them in their entirety with the appellant, along with a copy of the Notice of Inquiry. The appellant also submitted representations.

RECORDS:

The sole record at issue consists of the undisclosed portions of a Police occurrence report dated February 24, 2002.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

The personal privacy exemptions in section 38 apply only to information that qualifies as personal information. Therefore, I must first assess whether the relevant records contain personal information and, if so, to whom that information relates. The term “personal information” is defined in section 2(1) of the *Act*, in part, to mean recorded information about an identifiable individual, including the individual's name if 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 record contains the personal information of both the appellant and other identifiable individuals (the affected persons). They state that:

Along with the names of both parties it also contains the date of birth, place of employment, occupation and marital status of the identifiable individual.

Based on my review of the information contained in the record, I find that it qualifies as the personal information of the affected persons as the record refers to their age and marital status (section 2(1)(a)), their address (section 2(1)(d)), as well as the affected persons' names along with other personal information relating to them (section 2(1)(h)). I further find that the record

contains the personal information of the appellant, including the views or opinions of another individual about him (section 2(1)(g)).

While 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), 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.

In this case, the Police applied both sections 38(a) and (b) in refusing access to the records. In my analysis, I will consider first the applicability of section 38(b) and whether the disclosure of the personal information in the records would be an unjustified invasion of the personal privacy of other individuals and therefore exempt from disclosure.

Section 38(b) provides an exception to the general right of access to one's own personal information where a record contains the personal information of both the requester and other individuals. This section 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 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].

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.

In addition, if any of the exceptions to the section 14(1) exemption at paragraphs (a) through (e) applies, then disclosure would not be an unjustified invasion of privacy under section 38(b).

The Police applied section 38(b) in conjunction with section 14(3)(b) to the remainder of the pages of written records and to the videotape. Section 14(3)(b) 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 indicate that the information in the record was compiled as part of their investigation into allegations made by the appellant that he had been threatened by one of the affected persons. For this reason, the Police take the view that the information falls within the presumption in section 14(3)(b), as it was compiled as part of a law enforcement investigation.

The appellant's submissions do not directly address the issues raised in the Notice of Inquiry but rather provide a description of the events that gave rise to his allegations.

Based on my review of the record and the representations of the Police, I am satisfied that the record was compiled as part of an investigation into whether charges under the *Criminal Code* should be brought against one of the affected persons. If a record contains personal information and that information was compiled during the course of an investigation and is identifiable as such, the presumption at 14(3)(b) applies even where charges are not laid (Orders P-223, P-237, P-1225, MO-1181, MO-1443 and MO-1741), as is the case here. The appellant has not raised the application of the public interest override provision in section 16 and I find that none of the exceptions in section 14(4) apply.

Accordingly, I am satisfied that the undisclosed portions of the record are properly exempt under section 38(b). I have reviewed the manner in which the Police exercised their discretion not to disclose this information and find that it was based on proper considerations. Furthermore, I find that the Police took into account only relevant factors and did not base their decision on irrelevant considerations. Finally, there is no evidence before me that the Police exercised their discretion in bad faith or for an improper purpose.

Because of the manner in which I have addressed the application of section 38(b) to the record, it is not necessary for me to consider whether sections 38(a) and 8(2)(a) apply.

ORDER:

I uphold the decision of the Police not to disclose the remaining portions of the record to the appellant.

Original Signed By: _____

January 29, 2004

Donald Hale
Adjudicator