



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1779**

**Appeal MA-030376-1**

**Peel 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/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Peel Regional Police (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of an occurrence report prepared by the Police following an incident involving the requester. The Police located the requested report and, under section 21 of the *Act*, notified another individual (the complainant) of the request, seeking her position on the possible disclosure of the information to the requester. The complainant objected to the disclosure of any of information relating to her to the requester.

The Police then issued a decision granting partial access to the record. The Police denied access to the remaining portions of the record on the basis that this information was exempt under section 38(b) of the *Act* (invasion of privacy), in conjunction with the presumption against disclosure in section 14(3)(b) of the *Act* (information compiled as part of an investigation into a possible violation of the law).

The requester, now the appellant, appealed the decision to deny access. Mediation of the appeal was not possible and the matter was moved into the adjudication stage of the appeal process. I decided to seek the representations of the Police, initially. The Police made representations, the non-confidential portions of which were shared with the appellant, along with a copy of a Notice of Inquiry. The appellant did not respond to the Notice.

## **RECORDS:**

The sole record at issue consists of the undisclosed portions of occurrence report 03-191763.

## **DISCUSSION:**

### **PERSONAL INFORMATION/INVASION OF PRIVACY**

The first question I must address is whether the records contain personal information, and if so, to whom that information relates, for the answer to this question determines which sections of the *Act* may apply. The personal privacy exemption in section 38(b) applies only to information that qualifies as “personal information”, as defined in section 2(1) of the *Act*. In situations where the records contain personal information relating to the appellant, the applicable exemption is found in section 38(b).

“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)].

Based on my review of the records, I find that they contain the personal information of the appellant as well as that of one other individual.

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 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.

The Police submit that the record identified as responsive to the request includes the personal information of both the appellant and the complainant and was "collected by the Police during their investigation of this occurrence. The information provided by the complainant was used by the Police to investigate a possible violation of law, specifically the Criminal Code. . ."

As a result, the Police maintain that the undisclosed portion of the record contains information which falls within the ambit of the presumption in section 14(3)(b), which reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

I accept the submissions of the Police, and find that the personal information in the records was compiled and is identifiable as part of a Police investigation into a possible violation of the *Criminal Code*. The application of section 14(3)(b) is not dependent on whether charges are laid as the result of an investigation [Orders P-242 and PO-2254]. The presumption only requires that there be an investigation into a "possible violation of law".

Because I have found that the presumption in section 14(3)(b) applies, the factors in section 14(2) cannot rebut its application [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. I am therefore satisfied that disclosure of the personal information in

the records is presumed to constitute an unjustified invasion of the personal privacy of the individual to whom it relates.

As I have indicated above, section 38(b) gives an institution a discretion to refuse a requester's own personal information where it determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy. This discretion may be exercised in favour of disclosure, or in favour of withholding the information. In this appeal, the Police provided submissions on the reasons why they decided to withhold the information. I find no error in the manner in which the Police have exercised their discretion.

Accordingly, I uphold the decision of Police to withhold the information remaining at issue.

**ORDER:**

I uphold the decision of the Police.

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

Donald Hale  
Adjudicator

\_\_\_\_\_  
April 20, 2004