

ORDER MO-1817

Appeal MA-030384-1

Halton Regional Police

NATURE OF THE APPEAL:

The appellant was involved in a motor vehicle accident. Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), her lawyer asked the Halton Regional Police (the Police) for access to a complete copy of the police records related to the accident.

After they notified another individual (the affected party) about the request, the Police released some of the information to the appellant. The Police withheld the rest of the information on these grounds

- disclosure of some of the information would constitute an unjustified invasion of another individual's personal privacy [section 38(b) in conjunction with sections 14(2)(f) and (i), and 14(3)(a) and (b) of the *Act*]
- disclosure could reasonably be expected to endanger life or physical safety [section 8(1)(e)] and facilitate the commission of an unlawful act [section 8(1)(l)]

The appellant appealed the decision.

During mediation, some issues were clarified.

First, in an effort to resolve the appeal, the mediator contacted the affected party seeking his consent to disclose the information that may relate to him. The affected party did not consent to the disclosure. Furthermore, the appellant confirmed that she was no longer interested in gaining access to the information that the Police withheld on the basis of section 8. As a result, the only records remaining at issue are portions of entries from police officer's notebooks found at pages 7, 8, 9 and 10.

The appeal then moved to the adjudication stage and I have conducted an inquiry under the *Act*.

To commence the inquiry, I sought representations from the Police, which I received and then shared in their entirety with the appellant. I received no representations from the appellant, nor did the appellant otherwise communicate with this office during my inquiry.

ANALYSIS:

PERSONAL INFORMATION

The first issue for me to determine is whether the 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, as 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 [paragraph (h)].

I have examined the records at issue in this appeal. I find that the records contain the personal information of the appellant and of another identifiable individual, including such things as their

- sex
- names
- addresses
- telephone numbers
- other identifying numbers
- personal opinions or views

Hence, the information meets the definition of “personal information” set out in paragraphs (a), (c), (d), (e), and/or (h) of the section 2(1) definition.

Moreover, I find that the portions of the records withheld from the appellant comprise the personal information of another individual.

UNJUSTIFIED INVASION OF ANOTHER INDIVIDUAL’S PERSONAL PRIVACY

General principles

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 another individual, and disclosure of the information would constitute an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester. If the information falls within the scope of section 38(b), that does not end the matter as the institution may exercise its discretion to disclose the information to the requester. I will review the Police’s exercise of discretion under section 38(b) later in this order, after I have decided whether the exemption applies.

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], though it 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.

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).

In this case, the Police relied on the "presumed unjustified invasion of personal privacy" in section 14(3)(b) and on the factor listed under section 14(2)(f) of the *Act* to withhold those portions of the records that contain the personal information of another individual.

Section 14(3)(b) 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;

Police's representations

It is this institution's opinion that the name of an individual contained in a police record implies sensitivity and dictates privacy, unless consent for disclosure is sought. Only with written consent would this institution choose to release any type of third party information.

...

The personal information pertaining to the affected party was compiled as part of a law enforcement investigation into a serious motor vehicle collision on April 1, 2003.

The notebooks contain the officer's investigation into the motor vehicle collision, documenting personal information and opinion-related information. Therefore since the personal information relates to records compiled as part of an investigation, the disclosure of the personal information is presumed to be an invasion of their personal privacy, except to the extent that is necessary to

prosecute that violation. As already stated, the institution could not see any circumstances, which would modify or rebut this presumption.

...

... Even though a charge was not laid or criminal proceedings commenced in this motor vehicle collision does not negate the applicability of section 14(3)(b) (refer Order P-242). The presumption has been met; there was an investigation into a possible violation of the Highway Traffic Act.

Findings

I find that the section 14(3)(b) exemption applies to the information in the records at issue.

It is evident from an examination of these records and the circumstances of this appeal that the Police compiled this information during the course of their investigation into a motor vehicle accident and possible violations of the *Highway Traffic Act*. 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), as is the case here.

As indicated above, the section 14(3)(b) presumption cannot be overcome by any factors, listed or unlisted, under section 14(2). In addition, I find that no exceptions under section 14(4) apply. The application of the “public interest override” at section 16 of the *Act* was not raised, and I find that it has no application in the circumstances of this appeal.

All of the records, therefore, qualify for exemption under section 38(b).

SEVERANCE

Section 4(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt.

In the circumstances, I am satisfied that the Police carefully considered the records and reasonably severed the records under section 4(2), providing the appellant with as much information as possible, while withholding other information on the basis of the applicable exemptions.

EXERCISE OF DISCRETION UNDER SECTION 38(b)

As indicated, section 38(b) is a discretionary exemption. Therefore, once it is determined that a record qualifies for exemption under this section, the Police must exercise their discretion in deciding whether or not to disclose it.

The Commissioner may find that the institution erred in exercising its discretion where, for example

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573].

On this issue, the Police say:

... The records in question contain the personal information of the appellant and the personal information of the affected third party who chose not to consent to the disclosure of his information. Following carefully balancing the right of the appellant to the information contained within the records and the right of the affected third party to his privacy, a discretionary decision was made by this institution to deny access to a portion of the notebook entries.

The historical practice of this institution with respect to the release of similar types of documents was looked into. Without consent, disclosure would not occur.

This institution also looked at whether the disclosure would increase public confidence in the operation of the institution. It is our feeling that disclosure would not increase confidence but actually decrease confidence in the operation of the institution. If the public were to become aware that the police were not protecting the identity of individuals, this would have a disastrous effect. Therefore there is no public interest or compelling need to release the information.

Having considered the representations of the Police, I am satisfied that the Police did not err in the exercise of their discretion by taking into account irrelevant considerations, failing to take into account relevant considerations, or in any other respect. I am persuaded that the Police bore in mind the purposes of the *Act* by disclosing as much as possible of the information sought by the appellant, exempting only a fraction of the information in order to protect personal privacy.

CONCLUSION

All of the information the Police withheld from the appellant qualifies for exemption under section 38(b). In addition, the Police did not err in exercising discretion under section 38(b).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Rosemary Muzzi
Adjudicator

July 21, 2004 _____