



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1835

Appeal MA-040114-1

Quinte West Police Service



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NATURE OF THE APPEAL:

The Quinte West Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to any records relating to a specified occurrence involving the requester. The Police located the responsive records and granted access to them, in part. Portions of the records were denied pursuant to the discretionary exemption in section 38(b) of the *Act*.

The requester, now the appellant, appealed the decision of the Police.

Mediation of the appeal was not possible and the matter was moved to the adjudication stage of the process. I sought and received the representations of the Police, which were then shared with the appellant, along with a Notice of Inquiry. The appellant also provided me with representations.

RECORDS:

The records at issue in this appeal consist of the undisclosed portions of six pages of records, a one-page Victim Report, a two-page Occurrence Report and a three-page Supplementary Occurrence Report prepared by the investigating officers.

DISCUSSION:

PERSONAL INFORMATION

Only information that qualifies as “personal information” can be exempt from disclosure under the invasion of privacy exemption in section 38(b). The term “personal information” is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

I have reviewed the records remaining at issue and find that each of them contain the personal information of the appellant as the records describe in detail his actions and state of mind at the time of the occurrence (section 2(1)(h)) and the views or opinions of other individuals about the appellant (section 2(1)(g)). I also find that the records contain the personal information of several other identifiable individuals. The personal information consists of the personal opinions or views of these individuals (section 2(1)(e)) and the names of these individuals where they appear with other personal information relating to them (section 2(1)(h)).

INVASION OF 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 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].

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. [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.

The Police submit that the information contained in the records was compiled and formed part of their investigation into a possible violation of law, thereby falling within the ambit of the presumption in section 14(3)(b). The Police also indicate that the information is “highly sensitive” within the meaning of section 14(2)(f) and that this consideration favouring privacy protection applies in the circumstances.

The appellant states that he is seeking access to the information contained in the records in order to pursue any legal remedies he may have available to him against the Police and/or the individuals who made allegations against him. While not expressly stating such, I find that the appellant is referring to the consideration favouring the disclosure of personal information at section 14(2)(d).

Sections 14(2)(d) and (f) and 14(3)(b) state:

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
 - (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
 - (f) the personal information is highly sensitive;

- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
 - (b) 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;

Findings

I accept the arguments of the Police that the records were compiled and are identifiable as part of an investigation into a possible violation of law, thereby meeting the requirements of the presumption in section 14(3)(b). The records were prepared by the Police in the course of their investigation into certain allegations of criminal wrongdoing by the appellant. The fact that no criminal proceedings were commenced against the appellant does not negate the applicability of section 14(3)(b). The presumption in subsection 14(3)(b) only requires that there be an investigation into a possible violation of law. [Order P-242]

As noted above, the factors listed in section 14(2) cannot override the application of one of the presumptions in section 14(3) unless the circumstances listed in section 14(4) are present or there exists a public interest in the disclosure of the information under section 16. In the present appeal, neither section 14(4) nor section 16 have any application.

Accordingly, I conclude that disclosing the remaining portions of the records would constitute an unjustified invasion of personal privacy and that all of the undisclosed information qualifies for exemption under section 38(b).

Exercise of Discretion

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].

The Police made submissions in support of their decision to exercise discretion not to disclose that information which is exempt under section 38(b) to the appellant. They indicate that “portions of the occurrence were withheld due to the privacy implications associated with their release”. The Police go on to add that “[T]his institution has taken the concerns of the affected parties into consideration in making this determination.”

Following my review of all of the circumstances surrounding this appeal and the Police representations on the manner in which they exercised their discretion, I am satisfied that the Police have not erred in the manner in which they exercised their discretion not to disclose the records under section 38(b).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Adjudicator

_____ September 22, 2004