



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1874-F

**Appeals MA-030117-1, MA-030118-1 and
MA-030121-1**

South Bruce Grey Police Services Board



Tribunal Service Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is my final order in these appeals. It addresses the exercise of discretion by the South Bruce Grey Police Services Board (now the Hanover Police Services Board) (the Police).

Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the appellants jointly submitted three separate requests for information to the Police, all pertaining to the same named individual. They asked for:

1. A list of reloading equipment and weapons surrendered by the named individual after his sentencing hearing (Appeal MA-030117-1);
2. The physical description of a specified weapon contained in any record and/or report (Appeal MA-030118-1);
3. A copy of the occurrence report relating to the named individual's arrest on a specific date (Appeal MA-030121-1).

In each case, the Police denied the requesters access to all or portions of the requested records under several exemptions in the *Act*. The appellants appealed each of the decisions.

On August 30, 2004, I issued Order MO-1824-I in connection with these appeals. I upheld the Police's decision to deny access to parts of the records under the discretionary exemption at section 38(b) of the *Act*, but ordered the Police to disclose other parts of the records.

In the order, I commented as follows concerning the Police's exercise of discretion to withhold access to the records for which I upheld their section 38(b) exemption claim:

The decision letters provided by the Police in response to the appellant's request contain no reference to the exercise of discretion when deciding to claim section 38(b) as the basis for denying access. The Notice of Inquiry asked the Police to provide representations on the factors it considered in exercising discretion but the Police did not do so.

In the circumstances, I am not persuaded that the Police have exercised discretion in denying access to the portions of Records 2 and 4 that I have determined qualify for exemption under section 38(b), and I will include a provision in this interim order requiring the Police to do so.

Accordingly, I included Order Provision 4, which contained the following term relating to the exercise of discretion:

I order the Police to exercise discretion regarding the application of section 38(b) to the responsive parts of Record 2 and the withheld information in Record 4 (except the information mentioned in Order Provision 1), and to provide me and the appellants with an outline of the factors considered in exercising discretion in this context by **September 14, 2004**. I then ask the appellants to provide

representations to me on whether the Police properly exercised their discretion by **September 28, 2004.**

The Hanover Police (formerly the South Bruce Grey Police) complied with the first part of this provision by sending the appellants a letter dated September 8, 2004. In that same letter, they also provided the appellants with access to the parts of the records I had ordered disclosed. The appellants later advised this office that they had not received this package, nor a second copy that had been sent out by this office (which did not include the records ordered disclosed), because they had moved.

This office then sent a third copy of the Police's letter of September 8, 2004 to the appellants at their new address, together with an enclosure provided by the Police that pertained to the exercise of discretion in this case. The cover letter provided a new due date for appellants' representations on the exercise of discretion. An extension of this new deadline was granted at the appellants' request. Despite this further extension, which has now expired, the appellants have not provided representations on this issue.

DISCUSSION:

EXERCISE OF DISCRETION

The section 38(b) exemption claimed for Record 2 and parts of Record 4 is discretionary. Therefore, once it is determined that a record qualifies for exemption under this section, the Police must exercise discretion in deciding whether or not to disclose it. Under section 38(b), this involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

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.

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant (Orders P-344, MO-1573):

- the purposes of the *Act*, including the principles that
 - information should be available to the public

- individuals should have a right of access to their own personal information
- exemptions from the right of access should be limited and specific
- the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

The Police submit as follows in relation to their exercise of discretion:

The Hanover Police Service will continue to exercise our discretion [to withhold the information] under section 38(b) of the Act in responsive parts of Record 2 ... and the withheld information in Record 4....

We have weighed the rights of the appellants receiving this information versus the rights of the [named individual], under the [Act], due to the possibility of the third party's reputation being damaged by the appellant.

The Police enclosed a handout that they state the appellants distributed at a meeting of the Ontario Civilian Commission on Police Services relating to the named individual.

The appellants' position in this appeal has been that they seek the withheld information to enhance their own safety and that of the public. The handout provided by the Police also relates to this concern. In Order MO-1834-I, I considered and rejected this argument in the context of

section 16 of the *Act*, in deciding whether there was a compelling public interest in disclosure sufficient to outweigh the purpose of the personal privacy exemptions. It is also significant that the appellants have received all the records of their interactions with the Police, and the withheld information relates to the named individual.

Under all the circumstances, I am satisfied that the Police have appropriately exercised their discretion under section 38(b).

ORDER:

1. I uphold the Police's exercise of discretion to apply the section 38(b) exemption to the responsive parts of Record 2 and the withheld information in Record 4 (except the parts disclosed pursuant to Order MO-1824-I).

Original signed by: _____
John Higgins
Senior Adjudicator

November 24, 2004