



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1876

Appeal MA-040110-1

Waterloo Regional 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/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Waterloo Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information concerning the requester, including information of an evaluative nature and computer database search information.

The Police located a number of responsive records and provided the requester with a decision letter granting partial access to the records. The Police denied access to the remaining records and portions of records on the basis of the exemptions found in the following sections of the *Act*: section 38(a) (discretion to refuse requester's own information) in conjunction with section 8(1)(c) (law enforcement), and section 38(b) (invasion of privacy).

The requester, now the appellant, appealed the decision of the Police to deny access to the responsive information. He also appealed on the basis that additional responsive records should exist.

During mediation, the Police located two videotapes, and disclosed them to the appellant in their entirety. The Police also disclosed some additional portions of the records at issue, and clarified that, with respect to section 38(b) of the *Act*, they were relying on the presumed unjustified invasion of privacy found in section 14(3)(b) (information compiled as part of an investigation into a possible violation of law).

Also during mediation, the appellant confirmed that he was not seeking access to the information denied to him on the basis of section 38(a) in conjunction with 8(1)(c), and these sections are no longer at issue in this appeal. He also indicated that he was no longer appealing the issue of whether additional records exist.

Finally, the appellant further narrowed the scope of the information at issue to the following pages of the records or portions of records to which access was denied:

- the 5 lines in the narrative on page 4
- the 5 lines at the base of the narrative on page 5
- the severed portions of pages 12 to 18
- the severed portions of pages 20 to 24
- the narrative/summary on pages 38 to 40
- the severed portions of pages 54 to 56.

Mediation did not resolve the remaining issues, and this appeal was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the Police, initially, and received representations in response. I then sent the Notice of Inquiry, together with the non-confidential portions of the Police's representations, to the appellant. The appellant provided representations in response.

RECORDS:

The records remaining at issue in this appeal consist of the undisclosed portions of the occurrence reports that comprise pages 4, 5, 12–18, 20–24, 38–40, and 54–56, as described above.

DISCUSSION:

PRELIMINARY ISSUE

As a preliminary matter, the Police suggest in their representations that information which was severed from the records at issue is not responsive to the request, as it does not contain the “personal information of the requester”. The Police state: “The severed information is the personal information of third parties and does not form part of [the appellant’s] request.”

Previous orders have identified that if a record contains the personal information of a requester, a decision regarding access must be made under Part II of the *Act*. (Orders M-352 and MO-1757-I). In fact, in the circumstances of this request and appeal, the Police have issued a decision on access to those portions of the records remaining at issue, thereby reinforcing their view that the records are, in fact, responsive. Furthermore, the Police have denied access to these remaining portions of the records on the basis of the exemptions in section 38 of the *Act*. By doing so, they have confirmed that they have considered the information to be the personal information of the requester. Finally, the Police have provided representations on the exercise of their discretion under section 38 of the *Act*. I will review that exercise of discretion below.

Accordingly, notwithstanding the statement by the Police that some records are not responsive to the request, I am satisfied that they are responsive and I will, therefore, review the access decision made by the Police.

PERSONAL INFORMATION

The personal privacy exemptions in sections 38 and 14 apply only to information which qualifies as “personal information”, as defined in section 2(1) of the *Act*. This section reads:

“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 request resulting in this appeal is for information concerning the appellant. I find that, because the records relate to incidents involving the appellant, they contain his personal information within the meaning of section 2(1) of the *Act*.

The Police submit that the records also contain the personal information of other identifiable individuals. They state:

The name, address, telephone number, employment, occupation, age, date of birth, gender, race, height, weight, hair length and colour, skin colour, build and condition of each affected person qualify as the personal information of each affected person, and the information provided by the affected persons qualifies as the personal information of each affected person.

The Police also state that some of the records contain witness statements or other information provided by other identified individuals, and that this information constitutes their personal information.

I have reviewed those portions of the records remaining at issue, and find that they also contain the personal information of identifiable individuals other than the appellant, as defined in paragraphs (a), (b), (d), (e) and (h) of section 2(1).

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 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 deciding 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.

Operation of the presumption in section 14(3)(b)

In this appeal the Police rely on the "presumed unjustified invasion of personal privacy" in section 14(3)(b) of the *Act*, which states:

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;

In their representations, the Police identify the following for each page of the records:

- the specific violation of law which was being investigated,
- the possible penalty or sanction that could be imposed as a result of the investigation,
- the point in time during the course of each of the investigations when the information at issue was gathered, and
- whether or not charges were laid as a result of each of these investigations.

The appellant has provided substantial representations on the issues. Much of the appellant's representations focus on the background to his request and the reasons for his interest in obtaining the requested material.

With respect to the possible application of section 14(3)(b), the appellant's representations focus on who may have been the subject of the investigations, whether or not charges were laid as a result of the investigations, and his position that much of the information at issue is outdated and no longer relevant to any law enforcement investigation or proceedings. He is also of the view that some of the information may not be accurate.

The appellant also submits that portions of the occurrence reports at issue would have been compiled or created after the investigations were completed.

I agree with the appellant that some of the information in the records at issue is relatively old information; however, that has no bearing on whether or not the information at issue was compiled and is identifiable as part of an investigation into a possible violation of law. Furthermore, previous orders of this office have consistently determined that whether or not criminal proceedings were commenced as a result of the investigations does not negate the applicability of subsection 14(3)(b). The presumption in subsection 14(3)(b) only requires that there be an investigation into a possible violation of law. [See Order P-242]

Furthermore, I do not accept the appellant's characterization of the occurrence reports as having been created after the investigations were complete. Unlike documents such as an Information or Summons, which are generated following the completion of an investigation, the occurrence reports at issue were prepared contemporaneously with the police investigations, and the Police have identified that they contain information that was gathered prior to the completion of the investigation.

I have carefully reviewed the records at issue in this appeal. All of the records consist of occurrence reports prepared by police officers in the course of carrying out law enforcement investigations. I am satisfied that, in the circumstances of this appeal, all of the records at issue

were compiled and are identifiable as part of various investigations into possible violations of law. Accordingly, in my view, the personal information contained in the records falls within the presumption in section 14(3)(b) of the *Act*.

The appellant has provided substantial representations in support of his position that a number of the factors favouring disclosure that are found in section 14(2) of the *Act* apply in the circumstances of this appeal. As noted above, however, as a result of the decision in *John Doe*, it has been well established that a presumption under section 14(3) cannot be rebutted by any of the factors under section 14(2), either alone or taken together. Accordingly, I find that the disclosure of the personal information contained in the records would constitute a presumed unjustified invasion of the personal privacy of the individuals referred to in these documents, and that all of the undisclosed information remaining at issue qualifies for exemption under section 38(b).

EXERCISE OF DISCRETION

As noted, section 38(b) is a discretionary exemption. Once it is found that records qualify for exemption under this section, the Police must exercise their discretion in deciding whether or not to disclose the records.

I have reviewed the representations of the Police with respect to the considerations they took into account in deciding not to disclose the information in the records to the appellant. The Police state:

The appellant's right to access is not absolute. The institution must carefully balance the appellant's right of access with [the rights of] the affected persons ... when considering the release of information.

Later in their representations the Police identify that they did exercise their discretion under section 38(b), and they identify the considerations they took into account in exercising their discretion. The Police also state:

... consideration was given objectively and without prejudice to all factors, in good faith, with all relevant issues considered, and no relevance to irrelevant issues.

The appellant disputes the Police's position that they properly exercised their discretion. The appellant has provided much information concerning the reasons why, in his view, he should have access to the information at issue. The appellant states that it is his position that the Police have not proven that they have properly weighed the appellant's right of access to his own personal information as required by section 38(b).

I have reviewed in detail the undisclosed portions of the records remaining at issue. Based on the representations of the Police, as well as on the specific information which the Police disclosed to the appellant and the information which the Police chose to sever, I am satisfied that

the Police properly exercised their discretion in deciding not to disclose the remaining portions of the records.

PUBLIC INTEREST IN DISCLOSURE

Introduction

In his representations the appellant has taken the position that there is a compelling public interest in the disclosure of the records at issue within the meaning of section 16 of the *Act*. This section reads:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)].

If a compelling public interest is established, it must be balanced against the purpose of any exemptions which have been found to apply. Section 16 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption. [See Order P-1398]

The Appellant's Submissions

In his representations the appellant has identified a number of “public interest” issues which he believes apply in the circumstances of this appeal. These issues include:

- the information at issue is necessary for the appellant to submit to a Human Rights Tribunal or court;
- other individuals are experiencing similar problems to those experienced by the appellant in accessing information (the appellant then identifies the similarities between his situation and the situation of others);
- access to the information at issue will benefit other individuals in the same position as the appellant;
- various police and law enforcement databases may be linked to each other, and this may result in prejudice to individuals whose information is contained in those databases.

The appellant also identifies a number of specific reasons why he believes that he should be granted access to the records at issue, including his position that access to the records will assist him in determining whether certain statutory and other rights have been violated.

Findings

The portions of records which I have found to be exempt from disclosure consist of the severed portions of occurrence reports that contain the personal information of other identifiable individuals. I have also found that the disclosure of these records is presumed to constitute an unjustified invasion of privacy because these records were compiled and are identifiable as part of a number of investigations into possible violations of law.

I find that the appellant has failed to establish that there is a compelling public interest in the disclosure of the information in the records. Although I appreciate the appellant's interest in obtaining the information contained in the records for the purposes he identifies, I am not satisfied that a compelling public interest in the disclosure of the records at issue has been established. The appellant seeks access to these records in order to pursue his own interests, including determining whether his rights have been violated. In my view, the interest in the disclosure of these records is in the nature of a private rather than a public interest. As a result, I am not persuaded that there is a compelling public interest in the disclosure of these records. Therefore, section 16 does not apply.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Frank DeVries
Adjudicator

November 25, 2004