



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER MO-1899**

**Appeal MA-040243-1**

**Waterloo Regional Police Services Board**



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## **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 access to a copy of a specified occurrence report relating to an incident in which the requester was involved.

The Police located the requested information and granted partial access to it. Access to the remaining portions was denied pursuant to the exemptions found in section 38(a) of the *Act* (discretion to refuse requester's own information) in conjunction with sections 8(1)(l), 8(2)(a) and 8(2)(c) (law enforcement) and section 38(b) of the *Act* (invasion of privacy) taken together with the considerations listed in sections 14(2)(e) (unfair exposure to pecuniary or other harm), 14(2)(f) (highly sensitive information) and 14(2)(h) (information supplied in confidence) and the presumption in section 14(3)(b) (information compiled and identifiable as part of a law enforcement investigation).

The requester (now the appellant) appealed the decision.

During the mediation stage of the appeal, the appellant indicated that he is not seeking access to any "police codes" contained in the record. As the Police applied sections 38(a) and 8(1)(l) to this information alone, that exemption is no longer at issue. In addition, the appellant further narrowed the scope of his request to include only the undisclosed information in Records 6, 7, 13 and 14, excluding the police codes referred to above.

Further mediation was not possible and the matter was moved to the adjudication stage of the process. I sought and received the representations of the Police, initially, on the application of section 38(b) to the records only. The Police did not make representations on the application of section 38(a), taken in conjunction with sections 8(2)(a) and (c). The non-confidential portions of the representations of the Police were then shared with the appellant, along with a copy of a Notice of Inquiry. The appellant refused delivery of the materials forwarded from this office and did not, therefore, provide any submissions in response to the Notice.

## **RECORDS:**

The information remaining at issue includes only the undisclosed portions of Records 6, 7, 13 and 14 (excluding the police codes).

## **DISCUSSION:**

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

#### **Definition of the term "personal information"**

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 if 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 if 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].

### **The meaning of “about” the individual**

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

### **Findings with respect to “personal information”**

The Police concede that the first two lines of paragraph two of Record 6 along with the first four and a half lines of paragraph four and the undisclosed portion of paragraph five of Record 14 represent only the personal information of the appellant and ought to be disclosed to him. In addition, they argue that the remaining undisclosed portions of Records 6 and 14 qualify as the personal information of the individual referred to therein as it involves “the personal opinion of [this individual]”.

Upon closed examination of the definition of “personal information” referred to above, it is clear that information indicating the personal opinion of an individual will qualify as that individual’s personal information under section 2(1)(e) only if the opinion does not relate to another identifiable individual. If the opinion relates to another individual, it qualifies only as the personal information of that other individual, in this case the appellant, under section 2(1)(g). In my view, the undisclosed information contained in Records 6 and 14 qualifies as the personal information of the appellant.

The Police argue that the undisclosed portions of Records 6 and 14 also qualify as the personal information of the individual who provided the information. This individual is employed by the security department of a community college attended by the appellant. The Police suggest that, because “[T]he information was provided to police to assist in an investigation where the appellant was the complainant, which qualifies it as that person’s personal information.” In my view, the information was provided to the Police by the official with the college’s security department in his professional capacity. I find that the information does not contain any additional elements of a personal nature referring specifically to this individual that would render it his “personal information” for the purposes of section 2(1). As a result, I find that the information remaining undisclosed from Records 6 and 14 qualifies as the personal information of the appellant only. For this reason, it does not qualify under the invasion of privacy exemptions in sections 14(1) or 38(b) of the *Act* and must be disclosed to the appellant.

However, different considerations apply to the undisclosed information contained in Record 7, a narrative prepared by the investigating officer with the Police and Record 13, a witness statement taken by the officer from the individual who was the subject of the appellant’s complaint [the affected person]. I find that Records 7 and 13 contain not only the personal information of the appellant, consisting of the details of a complaint made by him against the affected person, but also the personal information of that individual under section 2(1)(h).

The affected person is referred to by name in both Records 7 and 13 and the records include additional information of a personal nature relating to this individual. Although the affected person was originally involved with the appellant only in a professional capacity, the information in the records describes a complaint of a personal nature made against the affected person. As a result, the information describes a situation that includes a personal aspect relating to the affected person and, therefore, qualifies as his personal information under section 2(1)(g). In conclusion, the undisclosed portions of Records 7 and 13 contain the personal information of both the appellant and the affected person.

**Is the undisclosed information in Records 7 and 13 exempt under the invasion of privacy exemption in section 38(b)?**

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 exemptions from this right.

Under section 38(b), where a record contains 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. Sections 14(1) to (4) provide guidance in determining whether the “unjustified invasion of personal privacy” threshold under section 38(b) is met. If one of the presumptions in section 14(3) apply, the information is exempt under section 14 [ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. The only way such a presumption can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 16 applies to it.

The Police submit that the undisclosed personal information in Records 7 and 13 was compiled as part of an investigation into a possible violation of law within the meaning of section 14(3)(b), which reads:

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;

Previous orders have determined that even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

In my view, the undisclosed portions of Records 7 and 13 were compiled and are identifiable as part of an investigation by the Police into a possible violation of law. As a result, I find that the disclosure of the remaining personal information is presumed to constitute an unjustified invasion of personal privacy under section 14(3)(b). The appellant has not raised the possible application of section 16 to the information and I find that none of the exceptions in section 14(4) apply. Accordingly, I find that the remaining undisclosed portions of Records 7 and 13 are exempt under section 38(b).

The Police have provided me with representations describing the reasoning behind their decision not to disclose the exempt information from the appellant. Because of the nature of much of these representations, I am unable to reproduce them here. I am satisfied, however, particularly in the absence of any submissions from the appellant on this point, that the Police have properly

exercised their discretion in deciding not to grant access to the undisclosed portions of Records 7 and 13 under section 38(b).

**ORDER:**

1. I order the Police to disclose to the appellant Records 6 and 14, in their entirety, by providing him with copies by **February 18, 2005** but not before **February 14, 2005**.
2. I uphold the decision of the Police to deny access to the remaining portions of Records 7 and 13.
3. In order to verify compliance with the terms of Order Provision 1, I reserve the right to require the Police to provide me with copies of the documents that are disclosed to the appellant.

Original Signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

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January 14, 2005