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

ORDER MO-2361

Appeal MA07-230

Halton Regional Police Services Board

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NATURE OF THE APPEAL:

The Halton Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a school board for a:

> Copy of the police investigation report or reports resulting from the Halton Regional Police investigation into an incident involving [a] teacher and his students …

By way of background, the Police and local Children's Aid Society (CAS) investigated allegations from a student and her mother (the complainants) relating to a teacher employed by the school board. The school board maintains that it suspended any investigation on its part to ensure that the Police and CAS investigations would not be obstructed or compromised. No criminal charges resulted from the Police's investigation. The school subsequently commenced its investigation into the same allegations and made the above-referenced request under the *Act*.

During the request stage, the Police contacted the teacher and complainants under the notification provisions under section 21(1) of the *Act*. The Police did not notify the other witnesses. The teacher objected to the release of any information contained in the record relating to him. The mother, on behalf of herself and the student, consented to the disclosure of the information they provided to the Police.

The Police then issued a decision letter to the school board denying access to the record it identified as the "police occurrence report". In its decision letter, the Police indicated that the record qualified for exemption under section 8(2)(a) (law enforcement) of the *Act*. The Police also advised that the law enforcement provisions at sections 8(1)(e) and 8(1)(l) of the *Act* applied to the 10-codes, patrol zone information and/or statistical codes contained in the records. Finally, the Police claimed that disclosure of the record would constitute an unjustified invasion of privacy under section 14(1) of the *Act* taking into consideration the presumptions at sections 14(3)(b) and 14(3)(h) and the factors at sections 14(2)(f) and 14(2)(i) of the *Act*.

The school board (now the appellant) appealed the Police's decision to this office.

No issues were resolved during mediation, and this file was transferred to the inquiry stage of the appeals process.

The adjudicator originally assigned to conduct the inquiry sought representations from the appellant, initially. In its representations, the appellant states:

> The Board seeks the disclosure of the witness statements of each student interviewed by the Police and/or the investigation notes pertaining to the interviews by Police of each student; but, the Board seeks these records only with prior written consent of the particular student or her parent.
>
> The Board does not seek the witness statement(s) of the Teacher or the investigation notes of those officers who interviewed the Teacher, nor does the

> Board seek any information related to Police codes, patrol zone information and/or statistical codes of the Police
> …
>
> The Board respectfully submits that the personal information of the student may be released because the student has authorized such disclosure by virtue of her consent; moreover, the absurd result principle applies to support disclosure to the Board. Any personal information belonging to the Teacher regarding the Teacher's race or ethnic origin, sexual orientation or religion and political associations may be severed from the records.

In its representations, the appellant raised the possible application of the public interest override at section 16 of the *Act*. The appellant's representations also indicate that its reference to "witness statements" includes any "magnetic, electronic, written, oral or video record of interviews with and/or information provided in any form by students investigated by the Police."

The appellant's written request, however, did not request copies of written statements and electronic or video recordings of the interviews conducted by the Police. Rather, the request sought access to "a copy of the police investigative report or reports". In response, the Police located a single record totaling 21 pages, which it identified as a "police occurrence report" in its decision letter to the appellant. This is the sole record identified in this appeal.

It appears that the Police contacted over one hundred students, most who were subsequently interviewed in the presence of their legal guardian(s) and school administrators. The actual interview notes, witness statements and videotapes relating to these interviews do not form part of the record. The information contained in the record appears to have been provided by less than one-third of the students interviewed by the Police during their investigation. The information the students provided to the Police is summarized or presented in point form. In several instances, the student witness is not identified by name.

In my view, based on the wording of the request, the 21 page record is responsive to the appellant's request. In any event, the time for the appellant to clarify or expand the scope of its request is not the representation stage during the Inquiry process. Should the appellant continue to seek access to additional information, such as the videotape and/or written statements obtained as a result of the Police's investigation, it should file a separate request under the *Act* for this information.

Another issue raised in the appellant's representations was whether the Police had an obligation to notify every student they contacted during their investigation to obtain their views about disclosure. The notification provisions of the *Act* provide that the Police must give written notice to any individual to whom the information relates before granting a request for access to the information relating to that individual. In my view, the Police were under no obligation under the *Act* to notify the student witnesses unless they proposed to grant the requester access to their information. Accordingly, the appellant's position that the Police should have notified every student interviewed in the course of its investigation will not be addressed further in this order.

The non-confidential portions of the appellant's representations were provided to the Police along with a Notice of Inquiry. The Police made representations in response and the non-confidential portions of their representations were provided to the appellant. The appellant was invited to make reply representations, which it did.

RECORDS:

The sole record at issue consists of a computer generated document totaling 21 pages entitled "Occurrence Report" on the first page and "Follow-Up Report" on the remaining pages.

DISCUSSION:

LAW ENFORCEMENT

Section 8(2)(a): report prepared in the course of law enforcement

As previously mentioned, the Police claim that sections 8(1)(e) and (l) of the *Act* apply to the portions of the record containing 10-codes, patrol zone information and/or statistical codes. However, the appellant indicates that it does not seek access to this information. Accordingly, this information and the exemptions to withhold this information are no longer at issue.

The Police, however, maintains that the entire record qualifies for exemption under section 8(2)(a) of the *Act*. The discretionary exemption at section 8(2)(a) reads:

> A head may refuse to disclose a record that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law

In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the Police must satisfy each part of the following three-part test:

1. the record must be a report; and

2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

(Order 200 and Order P-324)

There is no dispute among the parties that the Police is an agency charged with enforcing and regulating compliance with the law and that the record was prepared in the course of the Police's investigations. Accordingly, whether or not the record qualifies for exemption under section 8(2)(a) of the *Act* will turn on whether it constitutes a "report".

The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact [Orders P-200, MO-1238, MO-1337-I]. The title of a document is not determinative of whether it is a report, although it may be relevant to the issue [Order MO-1337-I].

The Police's representations state:

> The record consists of facts in the case and the way the officer conducted and concluded his investigation at the time. He prepared the report with a conclusion that no criminal activity has taken place.
>
> …
>
> The officer investigated the incident and documented his findings in the report. The report clearly goes beyond a mere reporting of facts as they obtain a formal statement and account of the results of the collation and consideration of information leading to the reasoning behind the officer's conclusion that no criminal offence had occurred.
>
> …
>
> Therefore, it is our submission that the records form a report that was prepared in the course of a law enforcement investigation by an agency having the function of enforcing the law.

The appellant did not provide representations as to whether the record constitutes a "report".

Decision and Analysis

Generally, occurrence reports generated by police forces have been found not to meet the definition of "report" under the *Act*, in that they are more in the nature of recordings of fact than formal, evaluative accounts of investigations (see Orders PO-1845, PO-1796, P-1618, MO-1986, MO-1771-I, M-1341, M-1141 and M-1120). In Order M-1109, Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:

> An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a "report."

The record at issue in this appeal is a 21 page computer generated document. The first eight pages of the record summarize the information the responding officer gathered from the complainants. The remaining pages were prepared by the investigating officer and summarize information provided by other students about themselves, other students and the suspect. It appears that most of this information was provided to the investigating officer directly but that

some of it may have been provided to him by other officers. The record also contains information the investigating officer obtained as a result of his independent investigations and includes his notes about the status of these investigations. Most of this information relates solely to the suspect.

The record also contains the responding and investigating officers' notes about administrative matters relating to the investigation, such as telephone contact with CAS and/or school administrators, the steps they propose to take to move the investigation forward and decisions as to which student populations will be notified and interviewed by the Police. The end of the record contains the investigating officer's conclusion that no criminal activity had taken place.

Though the information contained in the record has been carefully organized in chronological order and makes references to the next steps the investigating officer intends to make, I am not satisfied that the record represents a formal statement or account of the results of the collation and consideration of information. In making my decision, I note that none of the evidence gathered appears to have been evaluated. For instance, there is no evidence that the investigating officer preferred the evidence of some witnesses over others or that any credibility findings were made. Further, there is no indication as to what factors went into the investigating officer's conclusion that no criminal activity had taken place. Having regard to the above, I find that the record documents mere observations and recordings of fact gathered as a result of the investigation conducted by the Police. Accordingly, I find that the record is not a "report" for the purposes of section 8(2)(a) of the *Act*.

The Police claim that the information relating to individuals contained in the record is exempt under section 14(1) of the *Act*. As a result, I must consider whether disclosure of the information relating to the complainants, suspect, students and their legal guardians/parents would constitute an unjustified invasion of privacy.

Since the Police has not claimed that any other exemption applies to the information contained in the record relating to administrative matters regarding the investigation, I will order the Police to disclose this information to the appellant. For the sake of clarity, a highlighted copy of the record will be provided to the Police.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates.

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].

Effective April 1, 2007, the *Act* was amended by adding sections 2.1 and 2.2. These amendments apply only to appeals involving requests that were received by institutions after that date. Section 2.1 modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity".

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.)].

The parties do not dispute that the information at issue contains the personal information of the complainants, suspect, students and legal guardians/parents. Neither of the parties take the position that the portions of the record which identify school administrators, police officers or CAS staff constitutes "personal information" or reveals something of a personal nature about these individuals.

I have reviewed the record and am satisfied that it contains the "personal information" of the complainants, suspect, students and legal guardians/parents. In particular, I find that the record contains information relating to their race, national or ethnic origin [paragraph a], their educational, criminal or employment history [paragraph b], their address and telephone number [paragraph d], their views or opinions of another individual [paragraph g] and other personal information relating to these individuals taken along with their names [paragraph h].

I am also satisfied that the record contains the "personal information" of the unnamed students whose evidence is presented in point form. Though these students are not identified by name, I am satisfied that disclosure of the information they provided to the Police about themselves and the suspect could reasonably be expected to lead to their identification. Accordingly, I find that the record contains the "personal information" of the unnamed students. In particular, their views or opinions of another individual [paragraph g] along with personal information relating to themselves [paragraph h].

As I have found that the record contains the "personal information" of identifiable individuals for the purpose of section 2(1) of the *Act*, I must now determine whether the personal privacy exemption at section 14(1) of the *Act* applies to this information.

PERSONAL PRIVACY

As previously stated, the appellant does not seek access to the information contained in the record relating solely to the suspect. However, the appellant takes the position that any information about the suspect contained in the witness statements is the "personal information" of the individuals giving their statement to the Police. Accordingly, the appellant seeks access to the statements the complainants, students and legal guardians/parents provided to the Police in

the course of their investigation.

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. The appellant claims that the exceptions at sections 14(1)(a), (b) and (f) apply in the circumstances of this appeal. These sections state:

> 14. (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
>
> (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

In my view, the exception at section 14(1)(b) of the *Act* does not apply to the circumstances of this appeal. Section 14(1)(b) of the *Act* speaks to compelling circumstances where the health or safety of an individual is at risk unless that individual is notified of the existence of certain information. The representations of the appellant do not provide evidence demonstrating that the health and safety of an individual is at risk unless that same individual is notified of the existence of the information at issue. Accordingly, I find that section 14(1)(b) of the *Act* has no application in this appeal.

I will now go on to consider whether the exceptions at section 14(1)(a) and (f) of the *Act* apply in the circumstances of this appeal.

Section 14(1)(a): consent

For section 14(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request [see Order PO-1723]. During the request stage, the Police contacted the complainant and her mother to obtain their views about disclosure of the requested information. The mother, on behalf of herself and the student, consented to the disclosure of the information they provided to the Police. A copy of the consent form signed by the mother was sent to this office.

The Police also contacted the suspect who objected to the release of any information contained in the record relating to him. After considering the views of the complainants and the suspect, the Police decided to deny access to the entire record. In their representations, the Police state:

> The entire report consists of an incident involving a teacher. Each page of the report, whether it be the statement of a parent or student is mixed information and involved the teacher. This is precisely why after receiving the representations, a decision was made to deny access.

The appellant's position is that the information contained in the record provided by the complainant and her mother should be disclosed to them on the basis that these individuals consented to the release of their information. In support of its position, the appellant refers to Order MO-1868-R in which the former Assistant Commissioner Tom Mitchinson stated:

> To date, this office has not applied the absurd result principle to a situation where an individual has consented to disclose his or her witness statement which may contain personal information of individuals other than the witness and the requester. Having carefully considered the various interests at play in this type of situation, I have concluded that the principle should be extended to this type of situation.
>
> …
>
> In my view, if a witness consents to disclose his or her statement to a requester, barring exceptional circumstances, that alone should be sufficient to trigger the absurd result principle. While I acknowledge that this situation differs from the case where the information in the statement originates with a requester, in my view, it is a difference without a meaningful distinction. From a practical perspective, in many cases a consenting witness would have a copy of his or her statement and could simply pass it on to a requester. If no copy is in the possession of a witness, that individual could make a request under the *Act* for the record, which would be granted, and then simply provide it to the requester, without somehow raising any concerns regarding the privacy protection provisions in Part II of the *Act*. I can see no useful purpose in creating hurdles to a right of access that are not rooted in a legitimate concern for privacy protection. In my view, barring exceptional circumstances that are clearly not present here, I do not accept that the Legislature could have intended to cloak all witness statements with the highest degree of privacy protection inherent in a section 14(3) non-rebuttable presumption in circumstances where the author of the statement has expressed a clear intention to share the content of the statement with a requester.

The approach taken in Order MO-1868-R has been applied in several more recent orders of this office. I also adopt this reasoning for the purposes of this appeal and find that the exception at section 14(1)(a) of the *Act* applies to the information the complainants provided to the Police. In making my decision, I note that the information the complainants provided to the Police is

summarized within the first eight pages of the record. In my view, this information, can be reasonably severed from the remaining personal information contained in the record. As a result of my finding, I will order the Police to disclose the portions of the record which summarizes the evidence provided by the complainants.

As consent has not been obtained for the remaining information at issue, the exception at section 14(1)(a) cannot apply to this information. Accordingly, I will go on to determine whether the information the student witnesses and their legal guardians/parents provided to the Police about themselves and the suspect qualifies for exception under section 14(1)(f) of the *Act*.

14(1)(f): disclosure not an unjustified invasion of personal privacy

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f).

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Police claim that the presumptions found at paragraphs 14(3)(b) and (h) apply to the information at issue. Neither of the parties claim that section 14(4) has any application in the circumstances of this appeal but the appellant raised the possible application of the public interest override to any information I may find exempt under section 14(1) of the *Act*.

Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe*, cited above]. If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The Police submit that the factors favouring non-disclosure at paragraphs (f) (information is highly sensitive) and (i) (disclosure may unfairly damage the reputation) of section 14(2) apply to the information at issue. The appellant claims that the factor favouring disclosure at paragraph (b) (promote public health and safety) of section 14(2) of the *Act* applies to the information at issue.

14(3)(b): investigation into violation of law

Section 14(3)(b) of the *Act* reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information as 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;

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]. Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law [Orders M-734, M-841, M-1086]

The Police submit that the information at issue was compiled as part of its investigation into a possible violation of law. The appellant does not dispute that the information at issue was compiled as part of the Police's investigation into a possible violation of law. The appellant's argument is that section 14(3)(b) of the *Act* does not apply to the circumstances of this appeal as it requires the information to continue its investigation into the allegations made against the teacher.

The appellant's representations state:

> The Board respectfully submits that, section 14(3)(b) does not apply to prevent the disclosure of personal information of the student to the Board, because a disclosure of information is not presumed to constitute an unjustified invasion of personal privacy if it falls within the exception to the presumption at s.14(3)(b), namely that the disclosure of information was compiled and is identifiable as part of an investigation into a possible violation of law, and the disclosure is necessary to continue that investigation.
>
> The Board respectfully submits that the findings by the CAS suggest that there has been a breach by the Teacher of his duties pursuant to the *Education Act, Ontario College of Teachers Act* and Regulations, and, as such, the Board is conducting an investigation to verify whether in fact the Teacher has violated his duties in law, thereby justifying disciple or dismissal.
>
> …
>
> The information being requested is being requested in furtherance of the investigation, and is necessary in order to spare the student from the further victimization that might occur by unnecessarily re-interviewing the student.
>
> The *Act* does not require that for an investigation to be continued it must be conducted by Police or similar investigatory body, as such, the Board respectfully submits that an investigation conducted by an employer is consistent with the *Act*.

The Police did not specifically address the appellant's argument that section 14(3)(b) of the *Act* does not apply to the circumstances of this appeal on the basis that disclosure is necessary to continue the investigation. The Police, however, state:

> If a complaint about a teacher is received at the College, an investigator will request access to police records in order to conduct its investigation. The police deem this sharing of information for a "law enforcement purpose." When a

> request such as this is received by the Halton Regional Police Service, barring any current charges before the court, information is routinely shared. The information sharing request by the College must contain a detailed statement of what records are required, the purpose for which they are required and under what authority the College is requesting the records. The College of Teachers is able to apply a sanction if wrongdoing is found, namely strip the teacher of their teaching credentials or apply another form of discipline or punishment.
>
> School boards on the other hand, do not have the same authority as the College of teachers.
>
> …
>
> In short, if the College of Teachers requested this information to conduct an internal investigation, the records would be shared.

Decision and Analysis

As I have found that the information provided by the complainants should be disclosed to the appellant, the only information remaining in dispute is the information other students and their legal guardians/parents provided to the Police during the course of their investigation.

There is no dispute that the information remaining at issue was compiled during the course of an investigation into *Criminal Code* allegations. The fact that no criminal proceedings were commenced against the suspect is not determinative as to whether the presumption at section 14(3)(b) applies to the information at issue. All that is required is that an investigation into a possible violation of law [Order P-242], which the appellant does not dispute took place in the circumstances of this appeal.

The appellant's submission is that the presumption at section 14(3)(b) cannot apply to the withheld information as disclosure is necessary to continue its own investigation into the allegations made against the teacher.

In Order PO-2571, Adjudicator Diane Smith considered the "necessary to continue the investigation" exception contained in the final clause of section 21(3)(b), the provincial equivalent of section 14(3)(b) of the *Act*. In that order, the appellant wished to continue an investigation into whether he was subject to defamatory statements. Adjudicator Smith found that the presumption applied and stated:

> In my view, the situation is similar to that in Order MO-1410. In that case, the appellant argued that the *Act* (in that case the *Municipal Freedom of Information and Protection of Privacy Act*) did not specify who is to "continue the investigation". The appellant claimed that she was "entitled to continue the investigation into her spouse's death by retaining legal counsel and an accident reconstruction expert".

In Order MO-1410, Adjudicator Dora Nipp held:

> Previous orders of this office have established that the exception contained in the phrase "continue the investigation" refers to the investigation for which the personal information was compiled, i.e. the investigation "into a possible violation of law". Therefore, even though another party, in this situation the appellant, is continuing the investigation, this presumption applies (Orders M-249, M-718).

The situation is also similar to that in Order MO-1449, in which Adjudicator Laurel Cropley stated:

> In the circumstances of this appeal, the investigation conducted by the Police was concluded. Therefore, the disclosure of the personal information in the records is not necessary to continue that investigation. The appellant is essentially interested in commencing a new investigation into, not only the circumstances of her brother's death, but, apparently, into the actions of the Police with respect to the manner in which they conducted their investigation. …I find that the exception to section 14(3)(b) (section 21(3)(b) in the *Freedom of Information and Protection of Privacy Act*) does not apply.

I agree with and adopt the analysis and conclusion in Orders MO-1410 and MO-1499. Accordingly, I disagree with the appellant's argument that section 21(3)(b) does not apply. I find that the presumption in section 21(3)(b) applies to the undisclosed personal information in the records. Disclosure of this personal information is presumed to constitute an unjustified invasion of personal privacy of the individuals under section 21(3)(b) as the personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

I also agree and adopt the reasoning in Order MO-1410 and MO-1499. In my view, the exception contained in the phrase "continue the investigation" does not apply in the circumstances of this appeal. The purpose of the Police's investigation was to determine whether a contravention of the *Criminal Code* had occurred. The appellant advises that it seeks to determine whether the suspect had breached his responsibilities under the *Education Act* and/or *Ontario College of Teacher's Act*. Having regard to the appellant's representations, I am not satisfied that disclosure to the appellant is necessary to continue the Police's investigation. Like the appellant in Order MO-1449, the appellant in this appeal seeks to commence a new investigation. Even if I was of the view that the appellant has the authority to conduct an investigation pursuant to the *Education Act* and/or *Ontario College of Teacher's Act*, its investigation cannot be described as a continuation of the criminal investigation conducted by the Police.

Accordingly, I find that disclosure of the remaining personal information at issue is presumed to constitute an unjustified invasion of personal privacy of the individuals under section 14(3)(b) of the *Act* as the information was compiled and is identifiable as part of an investigation into a possible violation of law.

As I have found that the presumption at section 14(3)(b) applies to the remaining personal information at issue, it is not necessary for me to consider whether the factors favouring disclosure or non-disclosure at section 14(2) of the *Act* also apply. Accordingly, I find that the personal information of the student witnesses and their legal guardians/parents qualifies for exemption under section 14(1) of the *Act*. However, I will go on to consider the appellant's argument that the public interest override at section 16 of the *Act* applies to the circumstances of this appeal.

PUBLIC INTEREST OVERRIDE

As previously mentioned, in its representations the appellant claimed that the public interest override found at section 16 of the *Act* applies to the information at issue. This section states:

> 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 be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984]. Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

The appellant argues that if the record qualifies for exemption, the public interest override in section 16 of the *Act* applies in the circumstances of this case. The appellant states that the "compelling public interest test should not be confined only to shedding light on the operations of government". The appellant goes on to state that the information sought "…is not simply related to the employment of an individual, but is about the protection and safety of children and young people who are students of the Board and entrusted to the care of the Board and its employees." The appellant also argues that the fact that the Police has not charged the suspect heightens the public interest considerations in this appeal.

The Police submit that the public interest override in section 16 of the *Act* has no application in the circumstances of this appeal. The Police's representations suggest that any public interest relating to the safety of students has already been addressed and that if the College of Teachers make a request for the record outside the *Act*, it will be provided to them.

In response, the appellant's representations state:

> The Appellant submits that it seeks the disclosure of the information in order to complete its investigation into a violation of the *Education Act*, which the Appellant is statutorily required to uphold. Further, the Appellant submits that disclosure to the Ontario College of Teachers does not answer the public interest in the ability of school boards to conduct investigations into inappropriate … conduct of teachers towards students, and that the compelling interest of protecting children from … misconduct … clearly outweighs any exemption under the *Act*

Analysis and Decision

Having reviewed the record and the representations of the parties, I find that section 16 of the *Act* does not operate to override the personal privacy exemption which I found applies to the record.

As stated above, in considering whether there is a "public interest" in the disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. The appellant argues that the "compelling public interest test should not be confined only to shedding light on the operations of government" and goes on to argue that the record should be released so that it could better discharge its responsibilities under the *Education Act*. Though I am satisfied that the appellant's interest in the record is not entirely a private one, there is no evidence before me demonstrating that disclosure would serve the purpose of informing the public about the Police's activities. As a result, the appellant has not satisfied me that there is a "public interest", compelling or otherwise, in disclosure of the information I found exempt under section 14(1) of the *Act*.

In any event, even if a compelling public interest in the disclosure of the information were to exist, for the section 16 override provision to apply, the compelling public interest must be shown to clearly outweigh the purpose of section 14(1) of the *Act*. In this case, the purpose of the exemption at section 14(1) is the protection of the privacy of individuals, who provided

personal information about themselves to the Police. In my view, the interests raised by the appellant which favour disclosure do not clearly outweigh the privacy interests of these individuals.

Having regard to the above, I find that the public interest override at section 16 does not apply in the circumstances of this appeal and uphold the Police's decision to withhold the information I found exempt under section 14(1) of the *Act*.

ORDER:

1. I order the Police to disclose the portions of the record that I found not exempt under the *Act* by **November 24, 2008**. For the sake of clarity, I have highlighted the portions of the record that should **not** be disclosed in the copy of the record enclosed with this Order.

2. I uphold the Police's decision to withhold the remaining portions of the record, including the 10-codes, patrol zone information and/or statistical codes.

3. In order to verify compliance with this Order, I reserve the right to require a copy of the information disclosed by the Police pursuant to order provision 1 to be provided to me.

Original signed by: October 31, 2008
Jennifer James
Adjudicator