



**Information and Privacy  
Commissioner/Ontario**

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

---

---

# **INVESTIGATION REPORT**

**INVESTIGATION MC-000019-1**

**Guelph Police Services Board**

---

---

**December 15, 2000**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **INTRODUCTION:**

### **Background of the Complaint**

This investigation was initiated as a result of a complaint concerning the Guelph Police Services Board (the Police). The complainant contends that the Police breached the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) by improperly disclosing her personal information.

In the spring of 2000, prior to the complaint being filed, the complainant's estranged spouse submitted an access request to the Police under the *Act*. The request was for copies of two occurrence reports.

These occurrence reports related to separate incidents where the Police were called to attend a domestic dispute involving the complainant and a former boyfriend in the first instance, and the complainant and a former husband in the second. The occurrence reports contained information concerning the former boyfriend, the former husband and the complainant.

In submitting his access request, the estranged husband provided written consents from the former boyfriend and former husband to disclose their personal information to him.

The Police responded differently with respect to the two occurrence reports.

In the case of the former boyfriend, the Police relied on the consent provided with the access request, and released portions of the occurrence report containing his information to the estranged spouse. This occurrence report (occurrence report #1) contained the personal information of both the former boyfriend and the complainant, but only those portions containing information provided by the former boyfriend were disclosed. All other portions of occurrence report #1, including information obtained directly from the complainant, was severed by the Police prior to disclosure.

In the case of the former husband, the Police released the occurrence report containing his information to him directly, rather than to the estranged spouse. This occurrence report (occurrence report #2) contained the personal information of both the former husband and the complainant, much of which had been provided to the Police by the former husband.

The complainant maintains that the Police breached the *Act* by disclosing her personal information contained in the two occurrence reports. She also maintains that she was not notified of the access request, nor given the opportunity to provide any representations to the Police prior to their decision to disclose the records.

### **Issues Arising from the Investigation**

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the *Act*?

- (B) Was the disclosure of the complainant's personal information made in accordance with section 32 of the *Act*?

## **RESULTS OF THE INVESTIGATION:**

### **Issue A: Was the information in question "personal information" as defined in section 2(1) of the *Act*?**

Section 2(1) of the *Act* states in part that "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,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (g) the views or opinions of another individual about the individual,

Occurrence report #1 contains information about both the complainant and the former boyfriend gathered during the course of an investigation undertaken by the Police. In addition to various information about the former boyfriend, occurrence report #1 also contains the following personal information about the complainant: her name, marital relationship, address (paragraphs (a) and (d)), as well as the views and opinions of the former boyfriend about the complainant, which qualify as the complainant's personal information under paragraph (g).

Occurrence report #2 contains information about both the complainant and her former husband gathered during the course of a separate investigation undertaken by the Police. As with occurrence report #1, this record contains the complainant's personal information, specifically: her name, address, date of birth, car make and licence plate and marital relationship (paragraphs (a) and (d)), as well as the views or opinions of the former husband about the complainant (paragraph (g)).

**Conclusion:** Both records contain the personal information of the complainant. Occurrence report #1 also contains the personal information of the former boyfriend, and occurrence report #2 also contains the personal information of the former husband. Neither of the records contain any personal information of the estranged spouse.

**Issue B: Was the disclosure of the complainant's personal information made in accordance with section 32 of the Act?**

In order to comply with the *Act*, personal information may be disclosed only in accordance with section 32 of the *Act*. The only parts of section 32 with potential application in the circumstances of this investigation are sections 32(a) and (b) which read as follows:

An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

The Police maintain that because the former boyfriend and the former husband provided written consent to the estranged spouse, and that the former boyfriend called the Police to verbally consent to disclosure of his personal information, the Police were justified in disclosing the two occurrence reports. The Police make the following statements regarding occurrence report #1:

... I accepted [the former boyfriend's] verbal request for this information and forwarded it at his direction to [the estranged spouse]. I therefore treated this as a two-pronged request for information, written from [the estranged spouse] and verbal from [the former boyfriend].

In responding to [the former boyfriend's] oral request for his information I applied the provisions of section 38 and the law as reflected in ORDER M-444. More particularly, the release of information relating to other persons would not result in an unjustified invasion of privacy where the requester supplied that information. Furthermore, pursuant to the direction provided by [the former boyfriend] I forwarded his record, as requested, to [the estranged spouse].

In response to the draft version of this Report which I circulated to the parties, the Police raise the possible application of section 50(1) of the *Act*, which states:

If a head may give access to information under this *Act*, nothing in this *Act* prevents the head from giving access to that information in response to an oral request or in the absence of a request.

The Police rely on this section, in combination with the doctrine of "absurd result" outlined in Order M-444, to justify its disclosure of the reports in response to an oral request by the former boyfriend and the former husband.

In my view, the Police have mischaracterized the estranged spouse's access request.

Section 17(1)(a) of the *Act* states:

A person seeking access to a record shall,

make a request **in writing** to the institution that the person believes has custody or control of the record;

Although the former boyfriend and the former husband apparently provided consent to disclose their personal information to the estranged spouse, only the estranged spouse is properly considered to be a requester under the *Act*. The Police were in the process of dealing with the former spouse's access request when the consent was received from the former boyfriend and, in my view, all decisions relating to reports #1 and #2 should have been made by the Police in the context of this specific written request.

Because the request does not involve the estranged spouse's personal information, it is properly considered as a Part I request, and once it was received and acknowledged by the Police, all substantive and procedural requirements of Part I apply.

Section 14(1) of the *Act* is a mandatory exemption claim which must be applied by the Police if the requirements of the exemption are present. Specifically, if the record contains the personal information of any individual other than the requester, then the Police must deny access to this personal information unless one of the exceptions listed in sections 14(1)(a) through (f) are present and have been established.

The only exceptions with potential relevance in the circumstances of the estranged spouse's request are sections 14(1)(a) and (f).

### **Section 14(1)(a)**

This section provides:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

As noted above, occurrence report #1 contains the personal information of the former boyfriend and occurrence report #2 contains the personal information of the former husband, and the Police were provided with written consent from both of these individuals to disclose their personal information to the estranged spouse. Had these two records contained only the personal information of the former boyfriend and the former husband, then section 14(1)(a) would have permitted disclosure of the records, subject to any other exemption claims relied on by the Police. However, that was not the case. Both of these records contain the personal information of the complainant as well, and, as former Adjudicator John Higgins stated in Order M-927:

... consents under section 14(1)(a) can only apply to the personal information of the consenting individuals, and not to the personal information of others.

In my view, in the absence of written consent from the complainant, which was clearly not provided, section 14(1)(a) would appear to be inapplicable in these circumstances.

**Section 14(1)(f)**

This section provides:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Having consented to the disclosure of their personal information to the estranged spouse, it is reasonable for the Police to conclude that this disclosure would not constitute an unjustified invasion of the former boyfriend's or the former husband's privacy.

However, as far as the complainant is concerned, the *Act* provides a process that the Police must follow before determining whether disclosure of her personal information would be an unjustified invasion of privacy. Specifically, section 21(1)(b) of the *Act* states:

A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,

that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14(1)(f).

The Police acknowledge that the complainant was not provided with notice. Although the wording of section 21(1)(b) leaves open the possibility that disclosure could take place without notification in circumstances where the Police do not have reason to believe that disclosure might constitute an unjustified invasion of privacy, the use of the word "might" in this section imposes a low threshold for triggering an obligation to notify. Senior Adjudicator David Goodis considered this issue in two recent orders, one under the *Act* and the other under the provincial *Freedom of Information and Protection of Privacy Act* which has equivalent notification requirements. In Order MO-1209, he stated:

In Order PO-1657, with respect to similar provisions under the *Act's* provincial counterpart, I stated:

In this case, the [Criminal Injuries Compensation] Board did not notify the affected person of the appellant's request. Further, the Board disclosed portions of the requested records in the absence of notice to the affected person.

...

In my view, the purpose of these provisions of section 28 is to ensure that procedural fairness is accorded to individuals whose privacy interests may be at stake. Adherence to these provisions permits the subject individual to make representations as to whether or not the information should be disclosed and, if the head decides to disclose information, to appeal the matter to the Commissioner before disclosure actually takes place.

...

Here, it may be the case that the personal information disclosed by the Board would not constitute an unjustified invasion of the affected person's personal privacy within the meaning of sections 21(1)(f) and 49(b). Since the information has already been disclosed, I see no useful purpose in making a determination on this issue. However, the requested records clearly contained the personal information of both the appellant and the affected person and, as acknowledged by the Board, the matter giving rise to the records was highly sensitive. In these circumstances, there was a "reasonable doubt" as to whether disclosure would constitute an unjustified invasion of the affected person's personal privacy, and thus the Board had ample reason to believe that disclosure "might" constitute an unjustified invasion within the meaning of section 28(1)(b). Therefore, the Board ought not to have deprived the affected person of notice under this provision, and should have given her an opportunity to make representations on the issues prior to disclosure.

In my view, these comments apply in the circumstances of this appeal. The record clearly contained the personal information of the 10 individuals and the Township [of South Glengarry] had ample reason to believe that disclosure of their personal information might constitute an unjustified invasion of personal privacy within the meaning of section 21(1)(b). Therefore, the Township ought to have given the 10 individuals notice under section 21(1)(b) before disclosing portions of the record, in order to provide them with an opportunity to make representations on the issues prior to disclosure. Failure to comply with the mandatory notice provision in section 21(1)(b) breached the 10 individuals' right to be treated fairly, and constitutes a significant procedural defect. It is on this basis that I found above that the Township's first decision should not be upheld.

The obligations of an institution to provide notification are also addressed in Investigations I95-024M and I98-018P. In the first of these reports, Commissioner Ann Cavoukian made the following findings:

It is not our intention to suggest that the complainant's personal information would or would not have been exempted under section 14(1) of the *Act*. Rather, it is our view that since the disclosure of the complainant's personal information **might** have constituted an unjustified invasion of personal privacy, the

complainant should have been notified and given an opportunity to make representations on the issue of disclosure, as well as an opportunity to appeal the Board [of Education's] decision to our office. In our view, except in the clearest of cases, fairness requires that the person with the greatest interest in the information, the data subject, be given a chance to be heard.

It would appear, given the circumstances of the estranged spouse's request, that the Police would have a reasonable doubt as to whether disclosure of the complainant's personal information might be an unjustified invasion of her privacy, and the fact that she has complained to this Office about this disclosure clearly substantiates this view.

In the absence of notification, the complainant was not given an opportunity to provide representations to the Police before a decision was made in response to the estranged spouse's access request. Had she been notified, and had she provided representations objecting to disclosure, the Police would have been faced with two options. The Police could have denied access to the records on the basis that they qualified for exemption under section 14(1) of the *Act*; or they could have decided to disclose the records despite the complainant's objections. However, if the second option were chosen, the Police could not simply provide the records to the estranged spouse. Sections 21(7), (8) and (9) of the *Act* outline a process that the Police would have to follow in order to ensure that the privacy interests of the complainant were protected. These sections read as follows:

- (7) The head shall decide whether or not to disclose the record or part and give written notice of the decision to the person to whom the information relates and the person who made the request within thirty days after the notice under subsection (1) is given but not before the earlier of,
  - (a) the day the response to the notice from the person to whom the information relates is received; or
  - (b) twenty-one days after the notice is given.
- (8) A head who decides to disclose a record or part under subsection (7) shall state in the notice that,
  - (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and
  - (b) the person who made the request will be given access to the record or part unless an appeal of the decision is commenced within thirty days after the notice is given.
- (9) A head who decides under subsection (7) to disclose the record or part shall give the person who made the request access to the record or part within thirty days after notice is given under subsection (7), unless the



person to whom the information relates asks the Commissioner to review the decision.

The Police did not comply with the notification provisions of section 21 of the *Act* and, as a consequence, the Police were not in a position to make a proper determination of whether or not the section 14(1)(f) exception applied. The failure to comply with the procedural requirements of notifying the complainant under section 21(1)(b) of the *Act* prior to disclosing her personal information amounts to non-compliance with the requirements of section 32(a) of the *Act* (see Investigations I95-024M and I98-018P).

As far as the reference to Order M-444 is concerned, the Police appear to be relying on the “absurd result” doctrine as the basis for disclosing the information contained on the two occurrence reports that was originally supplied to the Police by the former boyfriend and the former husband.

In response to the draft version of this Report, the Police state:

Based on Order M-444 the former boyfriend and former [husband] were arguably entitled to have access to [reports #1 and #2]. Accordingly, they could have consented to the release of these records. Not only would that interpretation be in accordance with Order M-444, it also would follow the logic of the Supreme Court of Canada in such cases as *Baker*, wherein a functional and pragmatic interpretation of statutes is encouraged.

Again, in my view, the Police have misapplied the “absurd result” doctrine originally outlined by this Office in Order M-444.

In that Order, which has been followed in a number of subsequent orders of this Office, former Adjudicator John Higgins found:

... it is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. In this case, applying the presumption [under section 14(3)(b)] to deny access to information which the appellant provided to the Police in the first place is, in my view, a manifestly absurd result. Moreover, one of the primary purposes of the *Act* is to allow individuals to have access to records containing their own personal information, unless there is a compelling reason for non-disclosure. In my view, in the circumstances of this appeal, non-disclosure of this information would contradict this primary purpose.

The situation faced by Adjudicator Higgins is quite different than the one the Police were faced with in responding to the estranged spouse's request. In Order M-444, the requester was seeking access to his own personal information, and all individuals whose personal information was at issue had been notified and given an opportunity to provide representations as to whether or not disclosure of their personal information would constitute an unjustified invasion of privacy. After considering these representations, Adjudicator Higgins determined that denying access to

information provided to the Police by the requester would constitute an absurd result **in applying the section 14(3)(b) presumption**. That does not mean that disclosure would not be an unjustified invasion of privacy; only that disclosure in those circumstances would not be a **presumed** unjustified invasion of privacy. Factors favouring access and privacy protection would still need to be balanced, and the views and representations of the parties are important considerations in conducting this balancing exercise.

A determination of whether or not the “absurd result” doctrine applies varies from situation to situation and can only be made after considering the competing interests present in a particular case. The doctrine has never been considered by this Office in the absence of notification to all affected persons, and has only been applied after full compliance with the procedural requirements set out in the *Act*.

Adjudicator Laurel Cropley considered the doctrine in detail in Order MO-1323. She found:

In my view, it is the “higher” right of an individual to obtain his or her own personal information that underlies the reasoning in Order M-444 which related to information actually supplied by the requester. Subsequent orders have expanded on the circumstances in which an absurdity may be found, for example, in a case where a requester was present while a statement was given by another individual to the Police (Order P-1414) or where information on a record would **clearly** be known to the individual, such as where the requester already had a copy of the record (Order PO-1679) or where the requester was an intended recipient of the record (Order PO-1708).

In all cases, the “absurd result” has been applied **only** where the record contains the appellant’s personal information. In these cases, it is the contradiction of this higher right of access which results from the application of an exemption to the information. In my view, to expand the application of the “absurd result” in personal information appeals beyond the clearest of cases risks contradicting an equally fundamental principle of the *Act*, the protection of personal privacy. In general, I find that the fact that a record does not contain the appellant’s personal information weighs significantly against the application of the “absurd result” to the record. However, as I indicated above, all of the circumstances must be considered in determining whether this is one of those “clear cases” in which the absurdity outweighs the privacy protection principles.

Adjudicator Cropley then went on to find, based on the facts and arguments before her in that case, that it was not one of those “clear cases”, although she did “leave open the possibility that the absurd result principle may be considered and found applicable in other circumstances in appeals involving personal information or in appeals which do not involve records which contain personal information.”

The Police in the present case were dealing with a request made by the estranged spouse under Part I of the *Act*. The records do not contain his personal information and the information in these records was not originally supplied by him to the Police. Consents provided by the former boyfriend and the former husband do not transform the request into a request for access to the

estranged spouse's personal information, and the mandatory section 14(1) exemption claim is relevant in the circumstances. Moreover, based on the findings of Adjudicator Cropley in Order MO-1323, I am not satisfied that the "absurd result" doctrine would apply in the circumstances of this case.

For all of these reasons, I find that the disclosure of the complainant's personal information was not in accordance with Part I of the *Act*.

As far as section 32(b) is concerned, I find that it too has no application in this case, for the reasons outlined above in my discussion of section 14(1)(a) of the *Act*

**Conclusion:** The disclosure of the complainant's personal information was not made in accordance with section 32 of the *Act*.

## **SUMMARY OF CONCLUSIONS:**

- Both records contain the personal information of the complainant. Occurrence report #1 also contains the personal information of the former boyfriend, and occurrence report #2 also contains the personal information of the former husband. Neither of the records contain any personal information of the estranged spouse.
- The disclosure of the complainant's personal information was not made in accordance with section 32 of the *Act*.

## **RECOMMENDATIONS:**

I recommend that the Police take steps to ensure that in future, disclosures of personal information are in accordance with the provisions of the *Act*.

In responding to requests under Part I of the *Act*, I recommend that the Police adhere to the notification requirements of section 21 of the *Act*, in accordance with the direction provided by this Report.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

December 15, 2000 \_\_\_\_\_