



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-42

Appeal M-9200144

**Hamilton-Wentworth Regional
Board of Commissioners of Police**



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Hamilton-Wentworth Regional Board of Commissioners of Police (the police) received the following request under the Municipal Freedom of Information and Protection of Privacy Act (the Act):

... all information on 90-086605-9, including officer's occurrence sheets, statements and/or information about me from Stelco's [named individual] also information from Stelco's [named individual] ...

The police advised the requester that disclosure of the records "may affect the interest of a third party." In accordance with section 21(1)(b) of the Act, the police notified five individuals of the request, and solicited their views as to whether the records should be disclosed.

Subsequently, the police informed the requester that access to the records was denied pursuant to sections 8(1)(e), 8(1)(l), 8(2)(a), 13, 14, 38(a) and 38(b) of the Act. The requester appealed the decision.

The requested records consist of a one-page "Offence Form" under the heading of "Threatening", three pages identified as "Supplementary" forms and a two-page statement, all of which are dated December 12, 1990.

Attempts to mediate this appeal were not successful. Accordingly, notice that an inquiry was being conducted to review the decision was sent to the appellant, the police, and the five persons who had been notified of the request by the police (the affected persons). Enclosed with each notice was an Appeals Officer's Report, intended to assist the parties in making representations concerning the subject matter of the appeal. Representations were received from the police and the affected persons.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.

- C. Whether the records qualify for exemption under section 13 of the Act.
- D. Whether the records qualify for exemption under sections 8(1)(e) and/or (l) of the Act.
- E. Whether the records qualify for exemption under section 8(2)(a) of the Act.
- F. If the answer to Issues A, C, D, and/or E is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part:

"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,
- (e) the personal opinions or views of the individual except if they relate to another individual,
...

- (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;

[Emphasis added.]

The records contain information relating to an offence the appellant is alleged to have committed, including the date of birth, sex, occupation, employment location, address, telephone number, and name of the appellant and the affected persons. The records also contain information relating to statements and/or allegations of complainants and witnesses. In my view, this information qualifies as the personal information of both the appellant and the affected persons.

ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.

The police submit that section 38(b) applies to all of the information withheld from disclosure. Under Issue A, I found that the records contain the personal information of the appellant and the affected persons.

Section 36(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of the police. However, this right of access is not absolute; section 38 provides a number of exceptions to this general right of access to personal information by the person to whom it relates. Specifically, section 38(b) of the Act states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 38(b) introduces a balancing principle. The police must look at the information and weigh the requester's right of access to his/her own personal information against another individual's right to the protection of their privacy. If the police determine that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the police the discretion to deny access to the personal information of the requester.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester. Section 14(3) lists a series of circumstances which, if present, would raise the presumption of an unjustified invasion of personal privacy.

The police specifically rely on the application of sections 14(3)(b) and (d) to raise the presumption that disclosure of the information at issue would constitute an unjustified invasion of personal privacy. Sections 14(3)(b) and (d) of the Act read as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (b) 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;
- (d) relates to employment or educational history;

I have reviewed the circumstances under which the records at issue were created by or supplied to the police. I am satisfied that the personal information contained in the records at issue was compiled by a member of a police force and is identifiable as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been satisfied.

I will now consider whether any other provisions of the Act come into play to rebut this presumption. In my view, the records do not contain any information that pertains to section 14(4), and therefore that section does not operate to rebut the presumed unjustified invasion of privacy under section 14(3).

In the context of section 21 of the provincial Freedom of Information and Protection of Privacy Act (the provincial Act), former Commissioner Sidney B. Linden considered the rebuttal of a presumed unjustified invasion of personal privacy. He stated that, "... a combination of the circumstances set out in section 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view, such a case would be extremely unusual". In my view, this statement also applies to section 14 of the municipal Act, which is similar in wording to section 21 of the provincial Act.

The appellant did not provide written representations in response to the "Notice of Inquiry". However, during a telephone conversation, he advised the Appeals Officer that he wished to rely on the information he provided during the processing of the appeal. In the appellant's letter of appeal, while he does not

specifically refer to section 14(2)(d), he indicates that it may have relevance in this appeal as he may wish to pursue a civil action. Section 14(2)(d) states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

In Order P-312, Assistant Commissioner Tom Mitchinson, in discussing the provincial equivalent of section 14(2)(d), stated:

In my view, in order for section 21(2)(d) [section 14(2)(d) of the municipal Act] to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

For the purposes of this appeal, I accept that the appellant may bring a civil proceeding, and acknowledge that the personal information he is seeking access to may have some bearing on the determination of the right in question. However, I have not been provided with any information which indicates that the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing. Therefore, in the circumstances of this appeal, I feel that section 14(2)(d) is not a relevant consideration.

I have carefully considered the information at issue, the representations which have been provided, and the provisions of the Act which may operate to rebut the presumption of an unjustified invasion of personal privacy. Having done so, I find that the presumption contained in section 14(3)(b) is not rebutted. Therefore, it is not necessary for me to consider the application of section 14(3)(d).

In the circumstances, disclosure of the information at issue would constitute an unjustified invasion of the personal privacy of the affected persons and, therefore, the exemption under section 38(b) of the Act applies. Section 38(b) is a discretionary exemption. The police have provided representations regarding the exercise of discretion to refuse to disclose the information at issue and I find nothing to indicate that the exercise of discretion was improper.

My decision on Issue B makes it unnecessary for me to consider Issues C, D, E and F.

ORDER:

I uphold the decision to deny access to the records.

Original signed by: _____
Tom Wright
Commissioner

_____ September 30, 1992