



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

# **ORDER M-6**

**Appeal M-910279**

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



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## O R D E R

### BACKGROUND:

On June 21, 1991, a request was made by a News Director for a local television station to the Hamilton-Wentworth Regional Police for the names of the victims of an armed robbery alleged to have occurred that day, and the address where the incident occurred. Although the request was received by the Hamilton-Wentworth Regional Police, for the purposes of the Municipal Freedom of Information and Protection of Privacy Act, 1989, (the "Act"), the institution is the Hamilton-Wentworth Regional Board of Commissioners of Police.

The institution had earlier released the following information about the incident: the time of the incident, the vicinity, including a statement that it occurred at the home of the victims, the number and relationship of the victims, the type of crime, and the manner in which it occurred. The victims (the "affected persons") were members of the same family, and one of them has acted as spokesperson for the family. The spokesperson had specifically asked that the institution not release the names of the family members.

On July 9, 1991, the institution responded to the request, denying access to the requested information pursuant to sections 8 and 14 of the Act.

On July 16, 1991, the requester (the "appellant") appealed the decision of the institution. Notice of the appeal was sent to the appellant and the institution. The records containing the names of the victims and the address where the incident occurred

were obtained and reviewed by the Appeals Officer. The records consist of occurrence reports, police officers' notebooks, and a statement requesting anonymity signed by the spokesperson, on behalf of the family.

In an attempt to settle the appeal, the Appeals Officer spoke with the institution and the appellant. The Appeals Officer attempted to contact the spokesperson, but that person refused to speak about the matter.

As attempts at settlement were unsuccessful, the matter proceeded to inquiry. A Notice of Inquiry was sent to the appellant, the institution and the affected persons. The Notice was accompanied by a report prepared by the Appeals Officer. The purpose of this report is to assist the parties in making their representations to this office concerning the subject matter of the appeal. The report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to be relevant to the appeal. It also indicates that the parties, in making their representations, need not limit themselves to the questions set out in the report.

Representations were received from the institution, the appellant, and the affected person acting as spokesperson. I have considered all of these representations in making this Order.

**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 mandatory exemption provided by section 14 of the Act applies.
- C. If the answer to Issue B is yes, whether there is a compelling public interest in disclosure of the records which clearly outweighs the purpose of the exemption.
- D. Whether the discretionary exemption provided by section 8 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,

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (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.

In my view, the information at issue falls within the definition of personal information outlined in section 2(1). The names of the affected persons and the address where the offence occurred, which was, in this case, their residence address, are properly

considered recorded information about the affected persons and constitute personal information as defined in the Act.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.**

Once it has been determined that a record or part of a record contains personal information, section 14(1) of the Act prohibits disclosure of this information except in certain circumstances. One such circumstance is contained in section 14(1) (f) of the Act, which states:

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

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) provide guidance in determining whether disclosure would result in an unjustified invasion of personal privacy. Section 14(3) lists the types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

In this appeal, the institution specifically relied 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.

Reliance was also placed on the criterion contained in section 14(2) (e).

Sections 14(3) (b) and (d) state:

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 will first address the application of section 14(3)(b). In this appeal, members of a police force investigated allegations that an offence under the Criminal Code of Canada had been committed. Accordingly, it is my view that the presumption contained in section 14(3)(b) applies, as the personal information of the affected persons was compiled by the police during their investigation.

However, I note that section 14(3)(b) contains the following exception: the presumption applies "except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation." In my view, the first part of the exception is directed to a situation existing after a charge is laid. In its representations, the institution addressed this point:

At the present time no arrests have been made in relation to this robbery. Therefore, at this point disclosure is not necessary to prosecute the violation. This investigation is still ongoing ... Later, once an arrest has been effected, disclosure will be necessary and this will be done by the Crown Attorney ...

With regard to the second part of the exception, the appellant submitted the following:

Disclosure may not be necessary to continue the investigation. However, it may be helpful. [The appellant's station and the institution] co-operate in the production of a weekly ... series which has resulted in the resolution of hundreds of crimes over the last six years. [The series] often results in arrests when viewers remember seeing or hearing something which aids investigators. In all instances, crime locations are identified in order to assist viewer memory.

Although it is arguable that disclosure of the personal information may assist in apprehensions, in the circumstances of this case, I am not convinced that disclosure is necessary for the continuation of the investigation. Therefore, the exception contained in section 14(3)(b) does not apply.

As I have determined that the requirements for a presumed unjustified invasion of personal privacy under section 14(3) have been satisfied, I must consider whether any other

provisions of the Act come into play to rebut this presumption. Section 14(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 14(3). In my view, the records do not contain any information that pertains to section 14(4), and therefore section 14(4) does not operate to rebut the presumed unjustified invasion of privacy under section 14(3).

I note that sections 14(2) and (3) are similar in wording to sections 21(2) and (3) of the provincial Freedom of Information and Protection of Privacy Act, 1987. Orders concerning those parts of section 21 issued under the provincial Act may therefore provide guidance in interpreting and applying the corresponding parts of section 14 of the municipal Act.

In Order 20, dated October 7, 1988, former Commissioner Sidney B. Linden stated that "... a combination of the circumstances set out in subsection 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."

Section 14(2) 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,

- (a) the disclosure is desirable for the purpose of subjecting the



activities of the institution to public scrutiny;

- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

In Order 99, dated October 3, 1989, Commissioner Linden discussed whether the list of criteria under section 21(2) of the provincial Act was exhaustive. He stated:

It should be pointed out that subsection 21(2) requires the head to consider all the relevant circumstances in determining whether disclosure of

personal information constitutes an unjustified invasion of personal privacy. The subsection lists some of the criteria to be considered; however, the list is not exhaustive. By using the word "including" in its opening paragraph, I believe it requires the head to consider the circumstances of a case that do not fall under one or more of the listed criteria.

I agree with the reasoning of Commissioner Linden. The appellant has provided submissions which, although not fitting within the listed criteria, are relevant to the consideration of section 14(2). In his representations, the appellant stated:

Releasing the name and address of innocent victims is an invasion of privacy. However, it is wholly justified by the greater good that it serves. By reporting a robbery, the victims have launched a process which will lead to the release of their own identities, whether they like it or not. In order to prosecute this crime, the Canadian legal system will require the victims to testify, before the accused, in open court. At that time, their identity and the location of the crime will be known to all. It is an accepted and important part of our tradition that justice is carried out in the open. Innocent or not, like it or not, when a citizen becomes entangled in the legal system, he loses some privacy.

While I do not dispute the argument of the appellant, I believe its validity depends on the perpetrators having been apprehended and brought to trial. This has not happened here. Accordingly, I am of the view that this factor alone, at this point in time, does not rebut the presumption of an unjustified invasion of personal privacy provided by section 14(3) (b).

As I have found that the presumption of 14(3) (b) has not been rebutted, I do not need to consider the application of sections 14(3) (d) or 14(2) (e).

**ISSUE C: If the answer to Issue B is yes, whether there is a compelling public interest in disclosure of the records which clearly outweighs the purpose of the exemption.**

Section 16 states the following:

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

For this "public interest override" to apply, two requirements must be met:

- 1) there must be a compelling public interest in disclosure; and
- 2) this compelling public interest must clearly outweigh the purpose of the exemption.

In his submissions, the appellant stated:

The public has a right to know where crime is committed. And, it is important that citizens know who among them has been wronged. When the media reports a crime but fails to attach the faces of real people to it, the crime becomes a mere statistic. Viewers identify with people, not statistics.

The appellant also submitted that disclosure of personal information can mobilize the public:

There is a compelling public interest in disclosure. Crime is rampant in Canada yet many people are apathetic. Often the knowledge that a neighbour, colleague or friend has been victimized spurs people to action. Publicity about crimes in the past has caused groups to fight for stronger laws, to improve their own security, or to clean up their neighbourhoods.

In its submissions, the institution stated that the kind of information disclosed under its media release policy "... both protects and serves the general public interest by alerting the public at large of a problem in certain areas or types of criminal activities ... without [the institution] necessarily releasing the personal information of individuals." In the circumstances of this case, the institution submitted:

The following information was released to the media at the time of the offence:

- Owners of a Chinese restaurant were bound and robbed by four masked men when they arrived home with the day's receipts early in the morning of June 21, 1991.
- The restaurant owners, a husband and wife, arrived at their home in the Barton Street East and Kenora Avenue area at about 1:30 am.

- The husband went to the backyard where he was pounced on by two masked men, while two other suspects grabbed his wife.
- The weapons used were disclosed; three of the suspects had handguns and one of the suspects carried a knife.
- The couple were taken into the basement of their home, where their 10 year old son and the woman's mother were awakened. All four were bound and gagged with tape.
- The house was ransacked and cash from the restaurant and jewellery was taken by the thieves.

As well, it was released that there had been several similar incidents which have occurred in both Hamilton and Toronto. A warning to the public was issued to make them aware of these violent crimes.

The institution added that the public is kept apprised by "the continual release of information as it relates to the progress made by this institution in its investigations."

I accept that there may be an element of public interest in the disclosure of the personal information of victims. However, in the circumstances of this appeal, I am not persuaded that this interest is a compelling one. In my opinion, the objectives advanced by the appellant have been met through the release of

the information already disclosed by the institution, without the release of personal information.

In my view, even if I had concluded that there was a compelling public interest in disclosure of the personal information of the affected persons, I still must consider whether this compelling public interest "clearly outweighs" the purpose of the exemption provided by section 14. Section 16 requires me to balance the compelling public interest against the right of the affected persons to the protection of their individual privacy.

In this case, the affected persons expressed their wishes, orally and in writing, not to have their personal information disclosed. In his representations, the spokesperson for the affected persons indicated that he and his family are still upset and fearful as a result of the events which occurred. The institution stated that release of the personal information of the victims may "open them up to further attempts by the criminal element." The perpetrators of the crime have not as yet been apprehended. The institution indicated that "there is a reasonable expectation that some form of retaliation could occur."

In my view, any compelling public interest which might exist in this situation would not clearly outweigh the purpose of the exemption contained in section 14, which is the protection of the personal privacy of all individuals.

In closing, I wish to make it clear that I have based my conclusion on the particular circumstances of this appeal. I note that the institution has stated that "not all complainants have expressed these wishes for anonymity." Moreover, in appropriate circumstances "victims of crime have been identified in the past to the media by this institution and will continue [to be]."

As I have determined that disclosure of the information contained in the records in issue would result in an unjustified invasion of personal privacy as outlined in section 14, I need not consider Issue D.

**ORDER:**

I uphold the decision of the head.

Original signed by: \_\_\_\_\_  
Tom Wright  
Commissioner

December 19, 1991  
Date