



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

ORDER M-63

Appeal M-9200279

Ottawa Board of Commissioners of Police



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ORDER

BACKGROUND:

The Ottawa Board of Commissioners of Police (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a police investigation report. The Police notified an individual whose interests might be affected by release of the report, and after receiving representations from this person, decided to grant partial access to the two responsive records to the requester. The individual who had been notified appealed the Police's decision.

The records consist of a two-page General Occurrence Report (pages 001 and 002), and a one-page Follow-Up Investigation Report (page 003). Certain severances were made to these records, which were not appealed by the original requester and are not the subject of this appeal.

Mediation was not successful, and notice that an inquiry was being conducted to review the decision of the Police was sent to the original requester, the appellant, and the Police. Written representations were received from all three parties.

ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the 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 Police properly exercised discretion under section 38(b) of the Act in deciding to grant partial access to the requester.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the 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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) The views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

I have reviewed the records and, in my view, the information contained on the first three lines of pages 001 and 003, and the sentence at the bottom of page 002, beginning with "The messages ..." do not contain personal information. Because no other exemption claims were made by the Police, these parts of the records should be released to the requester.

I also find that the following parts of page 003 contain the personal information of the requester only: information following the heading "suspect"; the first two sentences of the second paragraph of the narrative section (with the exception of the name of the complainant); and the last sentence of the third paragraph.

Finally, I find that all remaining parts of the records contain the personal information of both the requester and the appellant.

ISSUE B: If the answer to Issue A is yes, whether the Police properly exercised their discretion under section 38(b) of the Act in deciding to grant partial access to the requester.

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, including section 38(b), which 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;

Because I have found under Issue A that parts of the records contain the personal information of the requester only, disclosure of this information cannot constitute an unjustified invasion of the appellant's personal privacy, and I find that section 38(b) does not apply. These parts of the records should be released to the requester.

With regard to the portions of the records which contain the personal information of both the requester and the appellant, section 38(b) introduces a balancing principle; the Police must look at the information and weigh the requester's right of access to her own personal information against the appellant's right to the protection of her privacy. If the Police determines that the release of the information would constitute an unjustified invasion of the appellant's personal privacy, then section 38(b) gives them discretion to deny the requester access to her own personal information [Orders M-22, M-28 and M-54].

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.

In its representations, the Police state that section 14(3)(b) applies to the parts of the records which are at issue in this appeal. This section states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

Having reviewed these parts of the records, I am satisfied that the personal information contained in them was compiled and is identifiable as part of an investigation into a possible violation of law, specifically an investigation of possible criminal activity initiated by the Police in response to information provided by the appellant. Accordingly, I find that the requirements for a presumed unjustified invasion of the appellant's personal privacy under section 14(3)(b) have been established.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy exist, I must then 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).

In the context of section 21 of the provincial Freedom of Information and Protection of Privacy Act, former Commissioner Sidney B. Linden stated that a combination of the circumstances set out in section 21(2) might be so compelling as to outweigh a presumption under section 21(3). However, in Commissioner Linden's view, such a case would be extremely unusual [Order 20]. I agree with Commissioner Linden's statement, and find that it applies equally to section 14 of the municipal Act, which is similar in wording to section 21.

The requester claims that section 14(2)(d) is a relevant consideration, and submits that disclosure of the records is necessary to ensure that all information which may be relevant to a proceeding currently before the Canada Human Rights Commission is made available to her. No other factor under section 14(2) was raised by the requester, and I find that none are relevant.

In Order M-28, Commissioner Tom Wright established that "... the application of 14(2)(d) alone is not sufficient to rebut the presumption contained in section 14(3)(b)." I agree with Commissioner Wright's view, and find that, regardless of whether or not section 14(2)(d) is a relevant consideration in the context of this appeal, it would not be sufficient to rebut the presumed unjustified invasion of the appellant's personal privacy.

Section 38(b) of the Act is a discretionary exemption, which gives the Police discretion to grant access to a record even if doing so would constitute an unjustified invasion of another individual's personal privacy. That is what the Police have chosen to do in this case. In its representations, the Police offer the following reasons for exercising discretion in this manner:

I have considered ... the following circumstances which I feel are relevant in my decision to release the information under appeal.

There are no records known to our institution indicating that the requester has a history of violence against the person or property.

Further, there is no evidence that the information received from the [appellant] was given to the institution in confidence.

The information in relation to a complaint (police report) filed by the [appellant], as well as the details of the complaint, were explained to the requester by the investigators, [this is] supported by the second paragraph of the Follow-Up Investigation [page 003].

I have reviewed the representations provided by the Police, and I find nothing to indicate that the exercise of discretion was improper and would not alter it on appeal.

As noted by Commissioner Wright in Order M-54, when dealing with a similar situation under section 38(b) of the Act:

The result in this appeal highlights an important aspect of section 38 of the Act. Section 38 is a discretionary exemption and even if, as in this case, the disclosure of the information would be an unjustified invasion of another individual's privacy, discretion can be exercised in favour of disclosure. In my view, the availability of discretion under section 38 is consistent with one of the purposes of the Act which is to "... provide individuals with a right of access to (their own) information".

ORDER:

1. I uphold the decision of the Police to provide partial access to the records to the requester.
2. I order the Police to disclose the unsevered parts of the records to the requester within 35 days following the date of this Order and **not** earlier than the thirtieth (30th) day following the date of this Order.
3. In order to verify compliance with the provisions of this Order, I order the Police to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 2, **only** upon request.

Original signed by: _____

Tom Mitchinson
Assistant Commissioner

_____ November 12, 1992