



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

# **ORDER M-98**

**Appeal M-9200431**

**Halton Region Board of Commissioners of Police**



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# ORDER

## BACKGROUND:

The Halton Region 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 the "Report of the Professional Standards Branch of the Police" which was presented to the Halton Regional Police Services Board (the Board) on March 30, 1992. The Police denied access pursuant to sections 8(1)(a), (b) and (f), and 8(2)(a) of the Act. Subsequently, the Police raised section 6(1)(b) as an additional exemption claim. The requester appealed the Police's decision.

Mediation was not successful, and notice that an inquiry was being conducted to review the decision of the Police was sent to both the Police and the appellant. Written representations were received from both parties. In their representations, the Police withdrew the section 8(1)(f) exemption claim.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the discretionary exemption provided by section 6(1)(b) of the Act applies.
- B. Whether the discretionary exemptions provided by sections 8(1)(a) and (b), and 8(2)(a) of the Act apply.
- C. Whether the mandatory exemption provided by section 14(1) of the Act applies.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the discretionary exemption provided by section 6(1)(b) of the Act applies.**

Section 6(1)(b) of the Act reads as follows:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

To qualify for exemption under section 6(1)(b), the Police must establish that:

1. a meeting of a council, board, commission, or other body or a committee of one of them took place; **and**
2. that a statute authorizes the holding of this meeting in the absence of the public; **and**
3. that disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

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Turning directly to the third requirement, the Police submit that the "three-page record forms the basis for a discussion during the monthly Board meeting into allegations made by the requester".

Having reviewed the record, I find that the Police have failed to establish the third requirement of the section 6(1)(b) exemption. In my view, although the information contained in the record may have been the **subject** of deliberations by the Police Services Board, the record itself does not contain information that would reveal the **substance** of those deliberation. Accordingly, regardless of whether or not the first two parts of the section 6(1)(b) exemption have been established, the third part has not, and I find that the record does not qualify for exemption under this section of the Act.

**ISSUE B: Whether the discretionary exemptions provided by sections 8(1)(a) and (b), and 8(2)(a) of the Act apply.**

Sections 8(1)(a) and (b) read as follows:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

Section 8(2)(a) reads as follows:

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;

To qualify for exemption under any of these sections, the Police must first establish that the record at issue relates to "law enforcement" activities. Section 2(1) of the Act provides assistance in determining what constitutes a law enforcement activity, by defining "law enforcement" as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The Police submit:

The law enforcement matter in this case is an internal investigation conducted by the Professional Standards Bureau ... The three-page record prepared by Professional Standards now forms the basis of an inquiry currently being conducted through the Ontario Civilian Commission on Police Services by the Ontario Provincial Police.

...

Because this record forms the basis of the investigation by the Ontario Civilian Commission on Police Services and the Commissioner has, by virtue of the Police Services Act, the authority to administer sanctions (section 25), the Head made a discretionary decision to preclude access believing that disclosure would interfere with the Commission inquiry.

The appellant submits:

While it is conceded that the record at issue here is a report prepared in the course of an investigation, it is submitted that the Professional Standards Branch is not an agency which has the function of enforcing and regulating compliance with a law. Clearly, as its title suggests, the Professional Standards Branch is concerned with "Professional standards". Again, this relates to matters which are professional and disciplinary in nature.

Generally speaking, the definition of "law enforcement" found in section 2(1) does not extend to employment-related disciplinary matters (Orders 157, 170, 182 and 192). Although there are exceptions to this general position (Orders 225 and 285), in my view, for an internal, employment-related disciplinary investigation to qualify as a "law enforcement" activity under the Act, an institution must establish that:

- (a) the investigation involves unlawful conduct, in the sense that the conduct may constitute a violation of a statute or regulation; and
- (b) the investigation was conducted with a view to proceedings in a court or tribunal in which a penalty or sanction could be imposed.

In my view, the Police have failed to establish that the investigation which resulted in the creation of the record at issue in this appeal was conducted "with a view to proceedings in a court or tribunal in which penalty or sanction could be imposed". The investigation was conducted by the Professional Standards Branch, not the Ontario Civilian Commission on Police Services. In my view, the Professional Standards Branch is a body responsible for reviewing internal employment-related disciplinary matters, and is not a regulatory or law enforcement agency involved in "law enforcement" activities as the term is used in sections 14(1) and (2) of the Act. Also, I find that the record at issue in this appeal was created as a result of an investigation which was conducted by the Police in their role as an employer, not as a regulatory or law enforcement agency.

Accordingly, I find that the exemptions provided by sections 8(1)(a) and (b), and 8(2)(a) of the Act do not apply in the circumstances of this appeal.

**ISSUE C: Whether the mandatory exemption provided by section 14(1) of the Act applies.**

Neither party referred explicitly to the possible application of the personal information exemption set out in section 14(1). However, because section 14(1) is a mandatory exemption, I will consider whether it is relevant in the circumstances of this appeal.

To qualify for exemption under section 14(1), the information must first qualify as "personal information" under the definition found in section 2(1) of the Act.

Having reviewed the record, I find that part 1 of the section entitled "Summary" contains information about criminal charges brought against an individual, and that this information qualifies as the personal information of this individual.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits disclosure of this information except in certain circumstances, including section 14(1)(f), which states:

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.

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

In my view, section 14(3)(b) is relevant in the circumstances of this appeal. That 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;

The information contained in part 1 of the section entitled "Summary" was compiled by the Police in the course of an investigation of criminal allegations and is, therefore, identifiable as part of an investigation into a possible violation of law. Accordingly, I find that disclosure of the information contained in that part of the record would constitute a presumed unjustified invasion of personal privacy pursuant to section 14(3)(b).

Once it is determined that the requirements for a presumed unjustified invasion of personal privacy under section 14(3) have been established, 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, none of these factors are relevant in this appeal.

Section 14(2) provides a list of factors, a combination of which, could rebut a presumption under section 14(3). After carefully considering this section, I find that the presumption raised by section 14(3)(b) of the Act has not been rebutted.

Accordingly, I find that disclosure of part 1 of the section entitled "Summary" would constitute an unjustified invasion of the personal privacy. I also find that disclosure of the name of the person referred to in the "Summary", which appears on page 3 of the record, would constitute an unjustified invasion of this individual's personal privacy and it too should not be released.

**ORDER:**

1. I order the Police to release the record, with the exception of part 1 of the section entitled "Summary" and the name of the individual on page 3, to the requester within 15 days of the date of this Order. I have attached a highlighted copy of the record to the copy of this Order which will be sent to the Police, which identifies the portions which should **not** be released to the requester.
2. In order to verify compliance with this order, I order the Police to provide me with a copy of the record which is disclosed to the requester pursuant to Provision 1, **only** upon my request.

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

\_\_\_\_\_ March 10, 1993