



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-167**

**Appeal M-9200220**

**Waterloo Regional Police Services Board**



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# ORDER

## BACKGROUND:

The Waterloo Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

... personal information and occurrences of me, in regards to any and all investigations done by police about me from January 1981 until the conclusion of the investigation in 1984.

The Police believed that some of the responsive records contained the personal information of individuals other than the requester and that disclosure of this information might constitute an unjustified invasion of the personal privacy of these individuals. The Police were able to locate only one of these individuals. Pursuant to section 21(1)(b) of the Act, the Police notified this individual (the affected person). The affected person did not consent to the disclosure of his personal information.

The Police identified 281 responsive records and disclosed many of them in total to the requester. The Police denied access in full to certain records pursuant to sections 11(c), (d), (e), and (h) of the Act and provided only partial access to others, claiming the application of the exemptions in sections 8(1)(c) and 38(b) of the Act for the portions not disclosed to the requester. The requester appealed the decision of the Police.

During mediation the Police withdrew its claim for the application of the exemption provided by sections 8(1)(c) and 11 of the Act and disclosed to the appellant the records for which those exemptions had been claimed. Also in the course of mediation the appellant indicated that he was not interested in receiving access to some of the records for which exemptions had been claimed. Further mediation was not possible and notice that an inquiry was being conducted to review the decision of the Police was sent to the appellant, the Police and the affected person. Representations were received from the Police and the affected person only.

The records which remain at issue consist of those portions of pages 241 to 244 which were not disclosed to the appellant. All of these records relate to charges brought against the appellant under the Police Act.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the records qualifies as "personal information" as defined by 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.

**SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined by 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;

I have reviewed pages 241 through 244 of the record. In my opinion, they contain the personal information of the appellant and other individuals, including that of the affected person.

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

I have found under Issue A that the records contain personal information of both the appellant and other individuals. 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 institutions covered by the Act. 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 reads as follows:

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) of the Act introduces a balancing principle. The Police must look at the information and weigh the requester's right of access to his 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 (Order 37).

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 the individual to whom the information relates. Section 14(2) provides some criteria for the head 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, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 38(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

In its representations the Police refer to sections 14(2)(h) and 14(2)(i) of the Act as the bases for their determination that the release of the information withheld from the record would constitute an unjustified invasion of other individuals' personal privacy. In my view, the submissions of the affected person can be considered to relate to the circumstances described in sections 14(2)(f) and (h) of the Act.

Sections 14(2)(f), (h) and (i) read as follows:

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,

- (f) the personal information is highly sensitive;
- (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 for the personal information to properly be considered "highly sensitive", the Police and/or the affected person resisting disclosure must establish that release of the information would cause excessive personal distress to the affected person (Order P-434). Given the nature of the information at issue, I am satisfied that section 14(2)(f) is a relevant consideration in this appeal.

The application of section 14(2)(i) is not dependent on whether the damage or harm envisioned by this clause is present or foreseeable but whether this damage or harm would be "unfair" to the individual involved (Order 256). The affected person has submitted that his circumstances have changed since the incident that resulted in the creation of the record. Based on this consideration, I am satisfied that section 14(2)(i) is also a relevant factor.

As far as the application of section 14(2)(h) is concerned, the Police submit that:

Obtaining information through law enforcement investigation is understood to have been obtained in confidence. To breach a confidence will undermine law enforcement public/police co-operation. Both the public and the police share in law enforcement responsibility. Co-operation through shared confidence must not be breached. The release of this identifiable information (names) is an unjustified invasion of personal privacy.

The Police have provided no evidence of how the individuals other than the appellant provided any of the information in confidence. I do not agree with the proposition that **any** information obtained through a law enforcement investigation is somehow presumed or "understood" to have been obtained in confidence. It is also not clear from the records that the information in question was supplied by the other individuals, including the affected person.

The affected person makes reference to:

... the guarantee by the W.R.P.F. [the Waterloo Regional Police Force] at the time of and during the investigation that none of the given circumstances would be released for public scrutiny then or ever.

That is evidence of a degree of confidentiality but there again is no statement as to what information may have been supplied by the affected person pursuant to that confidence. As such, I am only prepared to consider that section 14(2)(h) may be a relevant consideration in the circumstances of this appeal.

In summary, I have found that section 14(2)(h) may be relevant and that sections 14(2)(f) and (i) are relevant considerations in the circumstances of this appeal. These sections apply to the personal information

of the affected person as well as that of the individuals other than the appellant; they all weigh in favour of privacy protection. I have also considered all of the other factors enumerated in section 14(2), as well as any other relevant circumstances relating to this appeal. In my opinion, disclosure of the personal information of the individuals other than the appellant would constitute an unjustified invasion of the personal privacy of these individuals.

Section 38(b) is a discretionary exemption. I have reviewed the exercise of discretion of the Police in refusing to disclose the parts of the records for which I have found section 38(b) to apply. I have found nothing to indicate that the exercise of discretion was improper and would not alter it on appeal.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

July 28, 1993