



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-308

Appeal M-9300345

York Regional Police Services Board



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ORDER

BACKGROUND:

The York 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 information from a police occurrence report and the investigating officer's notebook relating to an alleged assault. The requester is a solicitor who is acting on behalf of the victim of the alleged assault.

The Police provided partial access to the occurrence report and the notebook. Access was denied to the remainder of the information pursuant to section 14 of the Act. The requester appealed this decision to the Commissioner's office.

In his letter of appeal, the appellant narrowed his request to "the proof of identification shown by the accused and the contents of that identification". This information is contained in lines 2 to 7 in paragraph one of page 0002 of the occurrence report. The Police denied access to this information pursuant to sections 14(3)(b), (d) and (h) of the Act.

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the Police was sent to the appellant, the Police and the accused (the affected person). Representations were received from the Police only. The appellant indicated that he wished his original letter of appeal to constitute his representations.

ISSUES:

The issues arising in this appeal are:

- A. Whether any of the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the record contains the personal information of both the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to the personal information contained in the record.

SUBMISSIONS/CONCLUSIONS:

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

Personal information is defined in section 2(1) of the Act, in part, to mean "recorded information about an identifiable individual...".

I have reviewed the information contained in the record and find that it qualifies as the personal information of both the appellant's client and the affected person.

ISSUE B: If the answer to Issue A is yes, and the record contains the personal information of both the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to the personal information contained in the record.

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 an institution. However, this right of access is not absolute. Section 38 provides a number of exceptions to this general right of access. One such exception is found in section 38(b) of the Act, 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;

As has been stated in a number of previous orders, section 38(b) introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his or her own personal information against the rights of other individuals to the protection of their personal privacy.

In my discussion of Issue A, I found that the record at issue contains the personal information of the appellant's client and another identifiable individual. Sections 14(2) and (3) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The Police submit that section 14(3)(b) of the Act applies to the information contained in the record. This section reads as follows:

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;

[IPC Order M-308/April 19,1994]

The Police submit that the personal information was compiled by its officers during an investigation into allegations that an assault had been committed involving the appellant's client and the affected person. Such a charge, if proven, could result in the laying of charges under The Criminal Code.

In these circumstances, I am satisfied that the Police have established that there exists a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act. Accordingly, I find that the disclosure of the record would result in an unjustified invasion of personal privacy.

Once a presumption under section 14(3) of the Act has been established, it can only be rebutted by the considerations contained in section 14(4) of the Act or by the public interest "override" set out in section 16 of the Act (Order M-170). I am of the opinion that none of the personal information contained in the record falls within the ambit of section 14(4). In addition, the appellant has not argued that the public interest override set out in section 16 applies to the facts of this case.

To summarize, in my view, the presumption contained in section 14(3)(b) applies to the personal information contained in the record at issue in this appeal and, therefore, the personal information is properly exempt from disclosure under section 38(b) of the Act.

I have reviewed the Police's exercise of discretion under section 38(b) in refusing to disclose the records. I find nothing improper in the manner in which this discretion was exercised in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ April 19, 1994