



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-314

Appeal M-9300458

Hamilton-Wentworth Regional Police Services Board



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ORDER

BACKGROUND:

The Hamilton-Wentworth Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for all records, phone calls, fax transmission memos, and notebooks pertaining to the Police's Professional Standards Branch file PSB-93-47, including any information held by three named police officers. The Police's Freedom of Information Co-ordinator (FOIC) opened file 93-133 for this request and located responsive records.

The requester also made a request to the Ministry of the Attorney General (the Ministry) for records relating to a complaint to the Police Complaints Commissioner. A copy of file PSB-93-47 was included in the Ministry's files, and the Ministry transferred that portion of the request to the Police. The Police's FOIC opened file 93-134 with respect to the transferred records.

The Police disclosed some records to the requester in response to both requests, and denied access to others. The requester appealed the decision of the Police. During mediation the Police disclosed some additional records to the appellant.

Further 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 three individuals identified in the records (the affected persons). Representations were received from the Police and the three affected persons.

RECORDS:

The records at issue in this appeal are described in Appendix "A". With the exception of page 104 (File 93-133) and page 86 (File 93-134), all other pages in File 93-134 are duplicates of File 93-133. The corresponding page numbers for each file are identified in the Appendix. To avoid confusion, I have assigned one record number to each duplicate page in the two files, and will only refer to the record numbers. However, my comments apply equally to the records contained in both files.

The Police have denied access to Records 1 through 19 in whole or in part pursuant to sections 8(1)(a), (b), and (f), 8(2)(a), 14, and 38(a) and (b) of the Act. Section 15(a) was claimed by the Police to exempt Record 20 in its entirety.

ISSUES:

- A. Whether any of 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, and the personal information relates to the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to

Records 1-19.

- C. If the answer to Issue A is yes, and the personal information relates only to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies to Records 1-19.
- D. Whether the discretionary exemptions provided by sections 8(1)(a), (b), (f) and 8(2)(a) of the Act apply to Records 1-19.
- E. Whether the discretionary exemption provided by section 15(a) of the Act applies to Record 20.
- F. If the records contain the personal information of the appellant and the answer to Issues D or E is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether any of 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 defines "personal information", in part, as "recorded information about an identifiable individual". The records at issue contain information relating to several incidents involving the appellant and other identifiable individuals as well as information relating to the appellant's complaint against several police officers. In my view, all the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act. I further find that the records at issue contain personal information which relates to the appellant and other identifiable individuals.

ISSUE B: If the answer to Issue A is yes, and the personal information relates to the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to Records 1-19.

In the majority of the records, the Police have granted the appellant access to the parts of the records which contain reference to or information about himself. The Police have withheld only those parts of the records which, in my view, contain personal information of the appellant and other identifiable individuals.

Section 36(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 38 of the Act provides a number of exemptions to this general right of access. One such exemption is found in section 38(b) of the Act, which reads:

[IPC Order M-314/May 2, 1994]

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) introduces a balancing principle. The Police must look at the information and weigh the requester's right of access to his or her personal information against the rights of other individuals to the protection of their personal privacy. If the Police determine that the disclosure of the information would constitute an unjustified invasion of the personal privacy of other individuals, then section 38(b) gives the Police the discretion to deny the requester access to the personal information.

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.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy.

The Police submit that Records 1 through 19 fall under the presumptions in sections 14(3)(b), (d) and (g). These sections 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;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

With respect to section 14(3)(b), the Police submit that the records at issue are contained in a Professional [IPC Order M-314/May 2, 1994]

Standards Branch (PSB) file and consist of information relating to their investigation of a complaint pursuant to the Police Services Act. Upon conclusion of the PSB investigation, the matter was forwarded to the Police Complaints Commission.

Based on the representations, I am satisfied that the records were compiled as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established.

Once a presumption under section 14(3) of the Act has been established, it may only be rebutted by the considerations contained in section 14(4) 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 information at issue falls within the ambit of section 14(4) of the Act. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies to the facts of this case.

Accordingly, I am of the view that the presumption contained in section 14(3)(b) applies to the personal information at issue in this appeal and, therefore, that the personal information qualifies for exemption under section 38(b) of the Act.

Section 38(b) is a discretionary exemption. I have reviewed the representations of the Police regarding its exercise of discretion to deny access to the records. I find nothing to indicate that the exercise of discretion was improper and I would not alter it on appeal.

Because of the manner in which I have disposed of Issues A and B, it is not necessary for me to consider Issues C and D.

ISSUE E: Whether the discretionary exemption provided by section 15(a) of the Act applies to Record 20.

Section 15(a) of the Act states as follows:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public;

The Police claim that this exemption applies to Record 20, which is an excerpt from a transcript from proceedings in the Ontario Court of Justice. I accept the position of the Police that this record is publicly available.

In Order 123, former Commissioner Sidney Linden dealt with the exemption in section 22(a) of the **[IPC Order M-314/May 2, 1994]**

Freedom of Information and Protection of Privacy Act, which corresponds to section 15(a) of the Act. In discussing this exemption, he stated that "in my view, whenever an institution relies on subsection 22(a), the head has a duty to inform the requester of the specific location of the records or information in question."

In their decision letter, the Police advised the appellant that the record was a court transcript which could be purchased from Provincial Courts. The Police then provided the address to which the appellant should direct his inquiries. In my view, the appellant has been properly informed of the specific location of the information, and I find that Record 20 qualifies for exemption under section 15(a) of the Act.

ISSUE F: If the records contain the personal information of the appellant and the answer to Issues D or E is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.

I have found that Record 20 contains the personal information of the appellant, and that this record qualifies for exemption under section 15(a) of the Act.

Section 38(a) of the Act provides an exception to the general right of access to personal information by the person to whom the information relates. It reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 9, 10, 11, 12, 13 or **15** would apply to the disclosure of that personal information; [emphasis added]

Section 38(a) provides the Police with the discretion to refuse to disclose to the appellant his own personal information in instances in which one of the enumerated exemptions would apply. The Police have provided representations regarding its exercise of discretion to deny access to the records. Having reviewed these representations, I find nothing to indicate that the exercise of discretion was improper and I would not alter it on appeal.

ORDER:

I uphold the decision of the Police.

Original signed by:
Laurel Cropley
Inquiry Officer

May 2, 1994

APPENDIX "A"

RECORDS AT ISSUE

RECORD NUMBER	FILE 93-133 PAGES	FILE 93-134 PAGES	DESCRIPTION	EXEMPTION(S)
1	35	18 (Duplicate)	Memo	8(1)(a), (b), (f), 8(2)(a), 14, 38(a) and (b)
2	36	19 (Duplicate)	Memo	same
3	83	65 (Duplicate)	Letter	same
4	86-87	68-69 (Duplicate)	Occurrence Report (Severed)	same
5	88	70 (Duplicate)	Occurrence Report	same
6	89	71 (Duplicate)	Occurrence Report (Severed)	same
7	90	72 (Duplicate)	Occurrence Report (Severed)	same
8	91	73 (Duplicate)	Occurrence Report (Severed)	same
9	92	74 (Duplicate)	Occurrence Report (Severed)	same
10	93	75 (Duplicate)	Occurrence Report	same
11	94-95	76-77 (Duplicate)	Memo	same
12	98	80 (Duplicate)	Memo	same
13	99	81 (Duplicate)	Memo	same
14	100	82 (Duplicate)	Occurrence Report (Severed)	same
15	101	83 (Duplicate)	Occurrence Report (Severed)	same
16	102	84 (Duplicate)	Occurrence Report (Severed)	same

RECORD NUMBER	FILE 93-133 PAGES	FILE 93-134 PAGES	DESCRIPTION	EXEMPTION(S)
17	103	85 (Duplicate)	Occurrence Report	same
18	104	N/A	Occurrence Report (Severed)	same
19	N/A	86	Occurrence Report (Severed)	same
20	105-117	87-99 (Duplicate)	Excerpt from court proceedings	15(a)