



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-293

Appeal M-9300099

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 51 specified categories of records, which are described in this order as Items 1 to 51. The records responsive to all 51 items are enumerated as pages 0001 to 0106.

After discussions between the Police and the requester designed to clarify the nature and extent of the records sought, the Police provided the requester with access to a number of responsive documents but denied access to the remainder of the records based on the exemptions contained in sections 7(1), 12, 14 and 38(a) and (b) of the Act. In addition, the Police advised the requester that records responsive to several of the items enumerated in her request did not exist.

The requester appealed the decision to deny access and maintained that records responsive to all aspects of her request should exist.

During the mediation stage of the appeal, it was agreed that each individual item which formed part of the original request should be treated as follows:

- 1) Since Items 1, 2, 3, 4, 7, 10, 20, 22, 23, 36 and 49 had been dealt with in previous appeals, they are no longer at issue in this appeal.
- 2) Items 12, 21, 28, 30, 31A, 33, 37, 38, 39, 40 and 42 are no longer in issue.
- 3) Items 13 and 19 are duplicates of Items 5 and 9.
- 4) Insofar as Items 8, 9, 11, 14, 15, 16, 17, 18, 26, 27, 32, 34, 35, 41, 43, 44, 45, 46, 47, 48, 50 and 51 are concerned, the sole remaining issue is whether any records responsive to the request (or any additional records) exist.
- 5) Access to portions of Items 5, 6, 24, 25, 29 and 31 was denied on the basis of the exemptions contained in sections 7(1), 12, 14 and 38(a) and (b) of the Act. The application of these exemptions to these records remains at issue.

Further mediation was not successful, and notice that an inquiry was being conducted to review the Police's decision was sent to the appellant, the Police and seven individuals whose rights may be affected by the disclosure of the information contained in the records (the affected persons). Representations were received from the appellant, the Police, and four of the affected persons.

In its representations, the Police have provided a copy of a letter sent to the appellant after the notice of inquiry was issued in which it has agreed that portions of additional records would be disclosed to the appellant. In her representations, the requester indicated that Item 44 is no longer at issue in this appeal.

Aside from those items in which the sole issue is whether the Police's search for additional records was reasonable in the circumstances, Appendix A to this order identifies the item number as originally requested, the records responsive to those items which remain at issue, the exemptions applied by the Police and the disposition of each item.

PRELIMINARY ISSUES:

The Police claim that parts of pages 0001, 0003, 00004, 0049, 0053, 0057, 0061, 0063, 0064, 0066, 0067, 0068, 0070, 0071, 0072, 0073, 0074, 0075, 0076, 0078, 0079, 0083, 0084, 0086, 0087, 0088, 0089, 0090, 0091, 0092, 0093, 0095, 0096, 0097, 0098, 0100, 0101, 0102, 0103, 0104 and 0106 of the records, which consist of police officer notes, are not responsive to the request. I have carefully reviewed these portions of the records and agree that they fall outside the scope of the request.

ISSUES:

The issues to be addressed in this appeal may be summarized as follows:

- A. Whether the records contain "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the records contain 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 records.
- C. Whether the discretionary exemption provided by section 7(1) of the Act applies to those records responsive to Item 24 of the request.
- D. Whether the discretionary exemption provided by section 12 of the Act applies to those records responsive to Item 24 of the request.
- E. Whether the search undertaken by the Police for records responsive to the request was reasonable in the circumstances of the appeal.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the records contain "personal information" as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part, that "personal information" means "recorded information about an identifiable individual".

In my view, all of the information contained in the records qualifies as personal information for the purposes of section 2(1) of the Act. I further find that this information relates to the appellant and a number of other individuals and is intertwined in such a way as to make it impossible to segregate the personal information of the appellant from that of the other individuals.

ISSUE B: If the answer to Issue A is yes, and the records contain 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 records.

The Police submit that section 38(b) of the Act applies to all of the records which remain at issue in this appeal.

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 records at issue contain the personal information of the appellant and other identifiable individuals. 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.

In its representations, the Police have claimed that the presumption contained in section 14(3)(b) of the Act is applicable to the personal information contained in portions of pages 0002, 0004, 0006, 0007, 0009, 0010 to 0024, 0033 to 0044, 0056, 0057, 0059, 0065, 0066, 0068, 0069, 0071, 0086, 0087, 0089, 0090, 0091, 0103 and 0106. Section 14(3)(b) of the Act provides:

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 records enumerated above were created by the Police as part of their investigation into certain occurrences involving the appellant, her family and other named individuals. These records consist of a computer generated call history report as well as notes and witness statements compiled by the Police in the course of their investigation into possible violations of various municipal by-laws and The Criminal Code. Pages 0006 and 0007 of the records is a memorandum from an Assistant Crown Attorney to the Crown Attorney for the Judicial District of York Region which contains information compiled by the Police in the course of their investigation of the appellant's allegations against other named individuals.

In the 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. The presumption in section 14(3)(b) only requires that there be an investigation into a **possible** violation of law. Therefore, the fact that no criminal charges were laid in this case does not negate the applicability of section 14(3)(b) (Orders P-223, P-237 and M-289).

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 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.

Because of the manner in which I have dealt with Issue B, it is not necessary for me to address Issues C and D.

ISSUE E: Whether the search undertaken by the Police for records responsive to the request was reasonable in the circumstances of the appeal.

In Items 8, 9, 11, 14, 15, 16, 17, 18, 26, 27, 32, 34, 35, 41, 43, 45, 46, 47, 48, 50 and 51, the sole remaining issue is whether the search undertaken by the Police for additional records responsive to the request was reasonable in the circumstances of the appeal.

In her representations, the appellant has provided detailed information relating to certain incidents and occurrences in which the Police were involved. The appellant believes that the Police must have created additional records to document these events.

The Police have provided representations which address each of the specific items raised by the appellant. Appended to their representations are 15 affidavits sworn by the police officers. These individuals were either involved in the investigation of the incidents described by the appellant or were the police officers charged with conducting the search for responsive records relating to those incidents. In each of these affidavits, the individual police officers relate the details of the searches undertaken to locate records responsive to the individual items which comprise this request and the results of those searches.

Having carefully reviewed the representations of the parties, and the affidavits of the individual police officers, I am satisfied that the Police have taken all reasonable steps to locate any records responsive to the appellant's request.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ March 29, 1994

APPENDIX "A"

ITEM #	RECORD PAGE #	TYPE OF RECORD	EXEMPTIONS APPLIED	DISPOSITION
5	0002 lines 20-27	Police notebook	14(3)(b), 38(b)	Not disclosed
6	0106 lines 41-43	Police notebook	14(3)(b), 38(b)	Not disclosed
24	0009	Computer generated call history report	14(3)(b), 38(b)	Not disclosed
24	0006-0007 (para. 1, 2, 3 and 5)	Memorandum	7(1), 12, 14(3)(b), 38(b)	Not disclosed
24	0010-0024, 0033-0044	Witness statements	14(3)(b), 38(b)	Not disclosed
25	0056 lines 9-end	Police notebook	14(3)(b), 38(b)	Not disclosed
25	0057 lines 1-8	Police notebook	14(3)(b), 38(b)	Not disclosed
25	0059 lines 20-end	Police notebook	14(3)(b), 38(b)	Not disclosed
29	0065 lines 37-end	Police notebook	14(3)(b), 38(b)	Not disclosed
29	0066 lines 1-9	Police notebook	14(3)(b), 38(b)	Not disclosed
31	0068 lines 32-end	Police notebook	14(3)(b), 38(b)	Not disclosed
31	0069 lines 1-4	Police notebook	14(3)(b), 38(b)	Not disclosed