



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-351

Appeal M-9400003

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant made a request to the Halton Regional Police Services Board (the Police) for a copy of an occurrence report together with any other information relating to certain allegations made against the appellant.

Access was denied to certain portions of the occurrence report (the record) on the following basis:

- invasion of privacy - sections 14(1) and 38(b)

A Notice of Inquiry was provided to the appellant, the Police and an affected person. Representations were received from all parties to the appeal.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined as recorded information about an identifiable individual. In my view, all of the information in the record qualifies as personal information. I further find that the personal information relates to the appellant and the affected person.

The Act gives individuals a general right of access to their own personal information held by a government body (section 36(1)). Section 38 of the Act provides a number of exceptions to this general right of access. One such exception is found in section 38(b) of the Act.

This section requires that the Police must weigh the requester's right of access to his/her own personal information against the privacy interests of other individuals. If the Police determine that the disclosure of the information would be an unjustified invasion of another individual's personal privacy, then section 38(b) allows the Police to deny the requester access to his/her personal information.

Sections 14(1), (2) and (3) of the Act provide guidance in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information in the record, the only way in which such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information (Order M-170).

In their representations, the Police state that the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)). Therefore, the Police submit that the release of the personal information would represent a presumed unjustified invasion of personal privacy.

The appellant argues against the application of section 14(3)(b), stating that there was no investigation, no crime was committed and that the Police file is now closed. The appellant further submits that a public

interest exists in the disclosure of the information in the record because it could assist her in proving that there was professional misconduct on the part of an individual.

The affected person submits that the personal information in the record is highly sensitive (section 14(2)(f)) and that the release of the information in the record may unfairly damage the reputation of any person referred to in the record (section 14(2)(i)).

Previous orders of this agency have determined that investigations of alleged violations of the Criminal Code qualify as investigations into a possible violation of law for the purposes of section 14(3)(b) (Orders M-6, M-198 and M-317). These orders have also established that section 14(3)(b) only requires that there be an investigation into a **possible violation** of law and the fact that no criminal proceedings were commenced by the Police does not negate the applicability of this section. I agree with these determinations and adopt them for the purposes of this appeal.

I have carefully reviewed the record and the representations of the parties and I make the following findings:

- (1) I find that the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law, namely, the Criminal Code and, accordingly, its disclosure would constitute a presumed invasion of the personal privacy of the affected person under section 14(3)(b) of the Act.
- (2) I find that none of the information in the record falls within the scope of section 14(4).
- (3) I have considered the representations of the appellant and, in my view, the interest in disclosure is personal in nature. I am not satisfied that a compelling public interest exists in the release of the personal information in the record and, therefore, section 16 does not apply in the circumstances of this appeal.
- (4) I find that the exemption in section 38(b) applies.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ July 14, 1994