



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-320

Appeal M-9400045

Durham Regional Police Services Board



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ORDER

BACKGROUND:

The Durham 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 relating to an incident in which the requester was involved. The request was set out as follows:

We have in our file a three page supplementary report from [the Police] which was prepared on October 30, 1991 by [a named police officer]. We also have in our file the witness statement of [a named individual] dated October 23, 1991 taken by [a named police officer]. We would appreciate it if you would provide us with copies of any additional statements made, and of any additional information contained in your file regarding this occurrence.

Pursuant to section 21 of the Act, the Police notified two individuals whose interests might be affected by disclosure of the requested records. Neither of these individuals responded to the notification.

The Police located records responsive to the request, provided the requester with partial access to some records and denied access to the remainder pursuant to sections 8(2)(a) and 14 of the Act. The Police also indicated that some of the information contained in an officer's notebook was removed as it did not pertain to the request. They further indicated that the six pages which the requester had already obtained had also been removed as not pertinent to the request. The requester appealed this decision.

Mediation was not successful, and notice that an inquiry was being conducted to review the decision of the Police was sent to the appellant and the Police. Representations were received from the Police only.

RECORDS AT ISSUE:

The records at issue in this appeal consist of a two-page general incident report (pages 1 and 2), a seven-page supplementary report (pages 3 through 7, and pages 7a and 8) and five pages from a police officer's notebook (pages 9 through 12, and page 14).

The Police claim that parts of pages 9, 10, 11, 12 and 14 of the records, which consist of a police officer's 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.

The Police also claim that pages 4, 5, 6, 7, 7a and 8 fall outside the request as the appellant has already received them. In my view, the fact that the appellant has already received a record is not necessarily
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determinative of the issue. In reviewing the wording of the request, however, I am satisfied that the appellant was not requesting this information as it was already in his possession. Accordingly, I find that these pages also fall outside the scope of the request.

In their representations, the Police submit that two lines from page 12 were inadvertently withheld from disclosure, and that they should be released to the appellant. In reviewing these two lines, I agree that they should be disclosed.

ISSUES:

- A. Whether 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 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 records qualify for exemption under section 14(2)(a) of the Act.
- D. If the answer to Issues A and C is yes, whether the discretionary exemption provided by section 38(a) of the Act applies to the personal information contained in the records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the records 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, as "recorded information about an identifiable individual".

Some of the information withheld by the Police consists of the names, addresses, telephone numbers, and in some cases the date of birth of individuals which were recorded by the Police during their investigation of the occurrence.

The balance of the information withheld by the Police consists of portions of statements by witnesses and other individuals which were made to the Police about the occurrence.

I find that all of the information contained in the portions of the records at issue qualifies as personal information for the purposes of section 2(1) of the Act, and that this information relates to the appellant and other identifiable 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 their 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 the remaining portions of the records. 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 at issue were created by the Police as part of their investigation into an occurrence involving the appellant and other named individuals. The Police submit that the investigation was initiated as a result of a complaint that an assault had occurred. As a result of the investigation no charges were laid.

In these circumstances, I am satisfied that the requirements to establish a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act have been established. The presumption in section 14(3)(b) only requires that there be an investigation into a **possible** violation of law. Therefore, the fact that, in this case, no criminal charges were laid does not negate the applicability of section 14(3)(b) (Order P-237).

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 have considered section 14(4) of the Act and find that none of the personal information in the records comes within the scope of this provision. In addition, the appellant has not provided representations with respect to the applicability of the public interest override set out in section 16 of the Act.

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.

ORDER:

1. I order the Police to disclose the two lines which are highlighted on the copy of page 12 of the record within fifteen (15) days of the date of this order. I have provided a copy of this page to the Freedom of Information Co-ordinator of the Police with a copy of this order.
2. I uphold the decision of the Police not to disclose the remaining pages.
3. In order to verify compliance with this order, I order the Police to provide me with a copy of the portion of page 12 which is disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ May 24, 1994